

CHARITYPUB01597
25/03/2011

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pp 01597 – 01668

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHARITY

Reference: Operation E10/0035

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 25 MARCH 2011

AT 1.50PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR ALEXIS: Commissioner, I now seek to call Mr Radulovic who has been good enough to make himself available to the Commission on very short notice. Could I now call him, please.

THE COMMISSIONER: Yes.

MR ALEXIS: And, Commissioner, his statement was tendered yesterday afternoon. It is Exhibit 133.

10 THE COMMISSIONER: Yes.

MR ALEXIS: And can I indicate that the computer screen dump relating to Ms Sandra Lazarus is Exhibit 127, if that could be obtained and also that relating to Jessica Lazarus is Exhibit 64.

THE COMMISSIONER: Yes. Ms Furness, do you appear for Mr Radulovic?

MS FURNESS: I do.

20

THE COMMISSIONER: Do you want me to make a, you don't need any order?

MS FURNESS: No, I don't need any order.

THE COMMISSIONER: Mr Radulovic, thank you for coming so promptly. It is really helpful. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

30 MR RADULOVIC: Under oath.

THE COMMISSIONER: Would you swear, Mr Radulovic in.

MR RADULOVIC: Yes, thank you.

MR ALEXIS: You must have watched a few TV shows, Mr Radulovic by putting your hand up?---Yeah.

Sir, is your full name Sasa S-A-S-A Radulovic?---Sasha Radulovic.

R-A, R-A-D-U-L-O-V-I-C?---The first name is Sasha.

10

Sasha, thank you. Mr Radulovic, should we understand that you're employed by the South Eastern Sydney and Illawarra Area Health Service or whatever the current correct description of that former entity is?---Yes, sir, yes, I am employed there.

Thank you. And you've been so employed I think for the last 14 years in the area of security. Is that so?---That's correct.

20

And you are, according to your statement which I'll come to, the acting manager of security services?---That's correct.

Is that your current position?---It's my current position at the present time.

And in the 2008 year, and I'll come to some documents relating to that, was the position that you then held?---I then held, oh, security supervisor.

30

Thank you. Now, sir, can I show you Exhibit 133 which is a statement that you provided to Commission investigators on 11 February, 2011. Do you have that document?---Yes, I do.

And sir, can you confirm that that is a copy of your statement?---Yes, it is.

And is the content of that statement true and correct?---It's true to my knowledge at that time.

40

Thank you very much. Now just while you have the statement, sir, if you could first of all come through to paragraph 14 and do you see that in paragraph 14 you deal with the subject of a Ms Sandra Lazarus?---(NO AUDIBLE REPLY)

You see what you've said in paragraph 14 deals with that subject?---I'm just trying to find it.

Paragraph 14, sir?---Yeah.

On page 4 if that helps?---Yes, that's correct.

Thank you. And if you could just turn over to page 5 of your statement, paragraph 16, in that paragraph you tell us that Ms Lazarus was issued with a photo identification card from campus security on 5 August, 2008. Do you see that?---Yes, I do.

Now could you turn please to what's attached to your statement, which is a document that appears to be something printed from a computer that contains Sandra Lazarus' name. Do you have that document?---Yes, I do.

10 And then just to complete the identification of the document, if you turn the page you'll see another computer page with a photograph and some details concerning the date that it was last printed. Do you see that?---Yes.

Now just coming back to the first of those two pages, can you tell us please what the document is and what it represents?---This represents the photo identification system.

Ah hmm?---This being someone applies for an ID form from the hospital, we commonly use a Sieman sypo system that does our ID's.

20

Ah hmm?---And we fill in the definition and personal imaging and tracking.

All right. So when we look at paragraph 19 of your statement and you describe the document that I've just taken you to as a "screen dump", relating to Ms Lazarus, should we understand that when we look at the two pages relating to Ms Sandra Lazarus, those pages represent what we would see on the computer screen if the relevant computer programme within the hospital security system was available to us to look at?---That's, that's true.

30 And that screen having been available it was printed off and that explains the expression "screen dump". Is that how we should understand it?---That is correct.

Thank you. And so is your evidence concerning the date of issue of the security identification card for Ms Sandra Lazarus, that is 5 August, 2008, based on what the security computer system tells you when you make the inquiry and you see the information on the screen represented by the documents?---That is correct.

40 Thank you. And could you look at the other document, please, which relates to Ms Jessica Lazarus, which I think is the last two documents attached to your statement. And should we understand that in relation to that document the same description that we've just gone through applies, namely it represents what one would see if one was looking at the hospital security system in the computer with respect to the date of issue of her photographic identification as well?---That, that is correct.

Yes, thank you very much, Mr Radulovic?---No worries.

MS SOARS: Mr Radulovic, my name is Julie Soars and I'm a barrister appearing for Sandra Lazarus and I'm going to ask you a few questions. Could I take you to paragraph 18 of your statement, Exhibit 133?---Yes.

And you see there you say that Sandra Lazarus was listed as a doctor?
---That is correct.

10 What do you base that statement on?---I didn't do the screen dump at that present time. Under the personal you see that, that determines what their position is.

THE COMMISSIONER: Sorry, under what?---Personal, sir. If you look under the screen dump there, it's got definition personal. Under the personal they - - -

Sorry, yes, I can see definition and then personal?---And next to it personal. Under personal that's what we define as what is your job title.

20 So what, do you click on personal?---Click on personal, it will come up like another page - - -

And is that what you did?---That's what I did and that's why I done the investigation, it came up as doctor.

Right.

30 MS SOARS: So is it your evidence, Mr Radulovic, that if you click on personal you get a different screen, is that correct, which has the information doctor in it?---Yes, you do, yes. Each screen dump it's all different, like vehicle will be, imaging will be the imaging one.

And is there anything else on the personal screen which would come up?
---Personal screen really determine the, what is their job title, that's it.

That's it. And what about vehicle?---Vehicle, we don't use that.

Okay. What about imaging, what's - - -?---Imaging what you just seen before that screen, imaging is actually the picture of the person.

40 The picture. And what about tracking?---Tracking is determine is when they used the card, the last time they used the card, it tells you where and when the last time they used it and what time and day.

Did you look at that when you were preparing your statement?---Yes, it was all blank.

All blank?---Was not used.

Have you produced that document that you looked at? The tracking document? You haven't produced that to the Commission?---Well, I haven't yet, no.

The tracking screen dump? No?---I haven't been asked.

Haven't been asked. In relation to the personal information as to doctor that you referred to how would that be inputted into the system? What steps would be taken to input that into the system and where would that
10 information come from?---The information come from the person who's doing, the person, like I say the individual will come and give an ID form, it's actually on the ID form to say what job title that they do.

It's on the application form?---Application form on the, for the security, ID, ID form.

Which you have referred to in your statement?---Mmm.

Yes.

20

THE COMMISSIONER: And who puts, who enters, who makes the entry from the form into the computer?---We do. Security inputs the rest. If you're classed as a doctor we class them as Code 27, they're doctors, they use access to the kids', Prince of Wales and the Children's Hospital.

If you've got a lesser, if you are a, if you have a title say as a researcher would you have the same access?---No, you won't.

What access would you have as a researcher?---You would general, a 23
30 plus you would get others if required, like if you, if the doctor, that person needs to go to emergency the person who requires the access, like the manager requiring for someone else to access they'll determine they need access to emergency and others.

MS SOARS: And it's your evidence is it that the application form which was used to input information into this computer system it was a common practice then to destroy that after the inputting of the information, is that your evidence?--Yes, it was common practice due to a lack of storage as well.

40

So you've searched, there's no point searching for the application?---No, sorry, I've tried everything possible.

I'd just like to refer you to some evidence that has been given to the Commissioner please, Mr Radulovic, by Helen McGilligan who was then at the time we're talking about in November 2007 the PA or personal assistant to Professor Hacker?---Yep.

Do you know Helen McGilligan?---No, I don't.

And Ms McGilligan gave some evidence at page 492 - - -

MR ALEXIS: Can I object to this course? I don't quite understand why Mr Radulovic who is not here as a witness of fact but is a witness to explain the content of the computer document what the point of cross-examining him on the evidence of other witnesses on matters of fact which aren't based on any document is.

10

THE COMMISSIONER: Yes. Ms Soars, I think I understand what you're trying to do but why don't you put the question directly. I mean, it doesn't matter what another witness said, I mean, you're interested in a possibility aren't you?

MS SOARS: Yes. Well, I'd prefer to put it to the witness and then ask him, in the light of that evidence - - -

THE COMMISSIONER: How about the witness said this? Put that.

20

MS SOARS: Yes. And then to say in the light of that ask him some questions about the date.

THE COMMISSIONER: All right.

MS SOARS: Commissioner, sorry, excuse me, Mr Radulovic, I was referring you to some evidence given by Helen McGilligan and that evidence is at pages 492 and 493 of the transcript, that's a reference for the Commissioner.

30

THE COMMISSIONER: Just, yes, I know, I would, I don't think it's appropriate to read him the evidence, just summarise it and (not transcribable)

MS SOARS: As you, as you please, Commissioner.

Ms McGilligan's evidence is that her best estimate is in November 2007 she accompanied Ms Lazarus to the security office to obtain her security badge and access pass, that she waited outside while Ms Lazarus obtained that and then, and, and then, until Ms Lazarus came out with the, with the badge. Sir, her evidence is that that occurred in November 2007, her best estimate.

40

MS FURNESS: Could I suggest that my friend indicates it's Sandra Lazarus.

MS SOARS: Sandra Lazarus, yes, thank you?---Can she produce the card?

I - - -?---Can she produce the card?

I understand that my client does not have the original card, no?

THE COMMISSIONER: The answer is no?---No.

MS SOARS: But can you, Mr Radulovic, having had a look at the screen dump which is attached to your statement and it is also Exhibit 127 - - -? ---Yeah.

10 - - - and it has the date, start date 5 August, 2008?---Yes.

Have you got that in front of you?---Yeah, I understand, I can see.

Is it, is it possible that that date could have been updated at a later point in time and, or if there was any variation in the security pass details that that date could have been updated?

THE COMMISSIONER: You mean changed?

20 MS SOARS: Changed, yes, Commissioner, okay.

THE COMMISSIONER: I think - - -?---Ah - - -

Just a moment?---Yeah, sorry.

MS SOARS: I'll start - - -

THE COMMISSIONER: I think, I think that is, I think that you have, I mean, what is being suggested is that there may, is it possible that there
30 could have been an earlier date on the computer reflecting the date on which the identity card was given and that was changed to put the date that we see now?---Every day, every day the person that comes into, that gets a card, that generates on that day. Say if a person got a card on say 25th of, today, it'd be imprinted on the left, on the 25th. So the card that this represents, that means that the person got the card on the 5th of the 8th, 2008. That's correct.

Could that have been, could in a month's time somebody change that date?
---In my, in my, as security in our department I've never seen it done in my
40 life.

MS SOARS: Is it, is it physically possible though to, to change the date on the computer programme by just overriding it?---Of course you can change it but there's also an imprint, imprint on the right that tells you the, the date that that's been updated and you can't change that.

And what are you referring to when you're referring to that by reference to the screen dump please, Mr Radulovic?---You see on the bottom it says last updated?

Yes?---That's, that you can't change, to the time and the date that people have, like me, I've looked at it that time, I've updated it, that's what it is.

But, but - - -?---That's never been done.

10 But it's been, this, this information in here was updated since 5 August, 2008, that's correct, isn't it? Last updated on 13 June, 2010?---That's the day to my knowledge is the card has been printed on that date.

And for example what if some information came to you to change, for example, the personal status of the person such as from student to doctor or some information like that as to their description? If, if someone, if an application form was put to you which changed that status would that be updated, would that, would the date of the updating then show as the start date?---The start date will stay the same but we updated the card would
20 change on the bottom right but the start date will stay the same. We just, it just means we're updating the card, it doesn't mean, on the left, that only stays when we print the card but when we update the card it's on the bottom right that tells you when it's updated. That doesn't change on the left, on the start date.

So I want to suggest to you, Mr Radulovic, that Ms Sandra Lazarus obtained her security pass in about November 2007. Do you agree that that's a possibility?---Not really if she hasn't proved, if she hasn't proved (not transcribable) but it is a possibility, of course, anything's possible.

30 THE COMMISSIONER: But I mean, I don't, what's being asked I think is is it possible that she could have obtained her card in August 2007 in the light of the screen dumps that you've provided?---What would happen, unless she changed her first name from Sandra to Lazarus and then got a new card and changed and she was a previous, not Sandra, she could have been another name, that could have been the possibility. If you change the name, if we update the card, say she wants a card next week, the start date's still going to stay the same, we just update the, the card to a new if but if someone comes in with a different surname or first name it would be different, totally
40 different.

So you're saying, you're saying that if she got, if a person who came in say August, 2007 or, let's just take that as the time, and gave their name as Jane Smith and then came later and gave their name Anne Smith, she'd get a new card as Anne Smith?---Yeah. But if she's already got, if she's - - -

Already got a card?---We check the card at the back it's got a number, then we can look it up and it'll pop up and then we can just change. And that won't change.

What won't change? The start date?---The start date.

So the start, what you're saying is the start date never changes?---It only, it never changes, when we update, it's only when we print a new card.

10 Yes, I understand that?---But if you're updating - - -

The start date for a particular card never changes?---Never changes only unless you start a new, brand new. But if you're updating the, if you're updating this one, the start date will not change. You're just updating the card. It would be printed here updated and you put a new card number, but this year won't change because it's the same person.

Yes. So - - -?---Even if you get a new card. Even with a different number, but the start date won't change.

20

MS SOARS: The security pass that's issued to someone as a result of the application we've referred to does it bear on the front of the card details of their title or their description?---Yes, it does.

So is it your evidence that based on what the documents you've reviewed and the computer system you've reviewed that Ms Sandra Lazarus' security pass would have had doctor on it. Is that correct?---Yes.

30

And it would have clearly had, is it clear in writing so you can see it from a distance?---Yes.

You've given some evidence that the date would change if you printed a new card. The start date would change if you printed a card?---A brand new card.

Yes. In what circumstances could you possibly print a new card?---If she's not on the system. If a person is not on the system, we check if the person, a surname or first name is on the system first, if they're not then they get a new, a new actual card, start a new profile.

40

THE COMMISSIONER: But that doesn't involve a change to the start date?---No, it doesn't. Unless, if this person's just changing the card and we go like just say Lazarus, we see there's two, three Lazarus or four, we go what's your first name, Sandra, okay, we just change the details. But the start date does not change. You're just updating the card with a new card. But the only imprint on the left is when you start a brand new profile. You start from scratch. When the change of the date you printed the card. But

when you update it, it's on the right, it says updated, the date, time we updated this person.

MS SOARS: And if I put to you that Ms Lazarus' evidence is that her security pass had PhD student on it, the one that was printed and I suggest to you that it was printed on an earlier date than 5 August, 2008.

THE COMMISSIONER: Let's do one by one.

10 MS SOARS: Okay. I put to you that Ms Sandra Lazarus' evidence is that she had a security pass on which PhD student was written?---That's what she says, that's not what I see on the computer, sorry.

And do you accept that there's a possibility that a security pass showing PhD student was issued to Ms Sandra Lazarus on a date earlier than 5 August, 2008?---When I further investigated, not to my knowledge, sorry.

THE COMMISSIONER: Can I, Mr Radulovic, is there a category PhD student?---There is PhD's.

20

PhD student?---I just know there's PhD or student.

If somebody is studying for a PhD degree - - -?---Well normally, normally it depends who they're working for, like for a university they put student, medical student year 5, medical student advanced, all this.

Is that, is that, does that appear on the card?---Yes, it does. Like I said, that's under the personal section.

30 And if you're studying for a PhD degree would it say PhD student?---It depends on your, your employment, your employer, like who employs these PhD students, but they could be say doctor, the boss of the nurse department would write them as just student, medical student or PhD student. It's up to
- - -

You could find somebody with a card which says PhD student?---Yes, you could.

40 MS SOARS: Excuse me, Commissioner, just a moment. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you. Do you have any questions? Any questions further, Mr - - -

MR ALEXIS: Just a couple of short points if I may, Mr Radulovic. Could we just get back in our hands please the screen dump for Sandra Lazarus and you mentioned in an answer to one of the earlier questions of the

applicable code for a doctor was Code 27, do you remember saying that?---
That's correct.

Now, can we just locate on the screen dump page, and I'm looking at the
one which doesn't have the photograph but the other one and let's call that
the first page and do you see the middle area of that page the words "access
control"?---What are we looking at?

10 About halfway down the screen dump page. Yes. Above the black line
running across the page?---Yes, access control.

Access control. Do you see that, Commissioner?

THE COMMISSIONER: Yes.

MR ALEXIS: And then immediately under that it's shaded in the dark part,
there's seems to be a crosshatch 27 and then the letters D-R-S R-H-W, do
you see that?---Yes, it is.

20 Thank you. So is that a reference to Code 27 that you were referring to?
---Yes, it is.

And is the reference to D-R-S a reference to doctor?---Doctors Royal
Hospital for Women, Sydney Children's, Prince of Wales Hospital and
Prince of Wales Private have access to all those areas.

I see. So the acronyms across the page after the acronym for doctors is a
reference to each of the hospitals into which that doctor could gain access, is
that so?---That is correct.

30 And just on the related subject of tracking and you were asked a question
about what the tracking inquiry told you when you looked at it and your
evidence was that it was blank, do you remember that?---Yes.

So does that tell us that in relation to the use of the card the cardholder
never used the card to access any secured areas into which card access was
required?---Yeah, depends on the person, what time they're working.
During the daytime a lot of places are open.

40 But if we put to one side - - -?---Yes, they haven't used their card at all.

What about in the car park?---Anywhere that's got access with a swipe it
should be accessible, should be on the computer and I've tried everything
(not transcribable).

But if a suggestion was made that the card was used only once and that was
to go into the car park - - -?---It should, it should come up.

You would've seen that when you looked at the tracking inquiry on the computer?---That's correct.

And you saw nothing?---Seen nothing.

Thank you. Could you also look at the screen dump for Jessica Lazarus and this may go to some extent to the question of other codes into which one can enter people who get these cards and yet if you could look at the same location on the screen dump concerning her in that shaded box beneath the words "access control", do you see that?---Yes, I do.

And it looks like it says "Code 32 RHW all readers except pharmacy? ---That's correct.

So what does that mean?---That means they have access to all of, in the women's area in Royal Hospital for Women but they haven't got access to the pharmacy.

And Code 32 what does that tell us, if anything, about whether Jessica Lazarus was registered or recorded as a student or a doctor or a nurse or in some other capacity?---Yeah, yeah, that's, they only get that if it's not a doctor, only if they're others like a student. Not a student, obviously the nurse, they, they get the. This access only.

I see. All right. Now, the identification of the appropriate code to be entered into the computer for the purpose of generating not only this information but the card from where do you get the information to enter the particular or applicable code?---You mean the code? It depends where people work and it depends on the information on the ID form where the nominated person who's delegated to sign gives them access to the areas. Like a doctor would've said she's working in the Royal, we need access to the Royal, everywhere.

Yes, thank you, Mr Radulovic?---No worries.

MS SOARS: Commissioner, excuse me, there's one further matter I just wish to put to Mr Radulovic to clarify a question about the tracking, his relates to his paragraph 27 of his statement, if I could take you to that, please, Mr Radulovic?---Yes, yes. Yeah.

Could you just read that to yourself, please, Mr Radulovic, I want to ask you a question about that paragraph?---Yes, go ahead.

You gave some evidence that the screen dump's coming up blank under tracking, is that correct?---Yes, on the tracking it was but we rectified the problem due to the lack of memory on the computer.

So the evidence you've given about what tracking inquiry shows, it's, so paragraph 27 at the time you made your statement was correct, is that your evidence?---That's correct, yeah.

And since then you've made a further inquiry in relation to the tracking?
---That's correct, yeah.

Thank you, Commissioner.

10 THE COMMISSIONER: Yes, thank you. I think I'd better ask Jessica Lazarus, you, you don't wish to ask any questions? I better find, she's not represented?

MR ALEXIS: You're not speaking to me, Commissioner?

THE COMMISSIONER: No.

MR ALEXIS: No, thank you.

20 THE COMMISSIONER: Jessica Lazarus, do you wish to ask this gentleman any questions?

MS LAZARUS: (NO AUDIBLE REPLY)

THE COMMISSIONER: I beg your pardon, I can't hear you, I'm sorry.

MS LAZARUS: No.

30 THE COMMISSIONER: No. Yes, thank you, and I take it Ms Michelle Lazarus you do not wish to ask any questions?

MS LAZARUS: (NO AUDIBLE REPLY)

THE COMMISSIONER: No. Very well, yes, thank you, Mr Radulovic?
---No worries.

Thank you for attending and that you for your evidence.

40 **THE WITNESS EXCUSED** **[2.21pm]**

THE COMMISSIONER: Ms Lazarus, could you please return to the witness box.

MS SOARS: Does the witness need to be reminded they're under oath, Commissioner, is that a formality you go through?

THE COMMISSIONER: Yes, thank you. You're still under your oath.

10 MS SOARS: Before the lunch adjournment, Ms Lazarus, I was asking you some questions in relation to your training in relation to the use of the Medex test device. Do you remember that?---Yes.

And you, you gave some answers to my questions including you referred to a training course you carried out with, at which your sister Jessica Lazarus also attended?---Yes. I'm sorry, one second, I don't mean to be, can I just access my bag, I think I've left something in there that's switched on. Sorry, I apologise.

20 Could the, could the witness be shown Exhibit 46 while she's doing that, thank you?---Sorry, I just have to look otherwise I will be, sorry.

That's all right. Ms Lazarus, I'm showing you Exhibit 46 which is a certificate of attendance at a course by Jessica Lazarus?---Yes.

Can you see that? Looking at that, is, is it your recollection that this is the, you attend the, the same course on the same dates, is that your evidence? ---Yes.

30 And did you, is it your evidence that you got a certificate of attendance from attending that course?---Yes.

And where is that certificate of attendance now?---I've looked through every document including documentation seized from me, from my premises - - -

THE COMMISSIONER: Your answer is you don't know?---I don't know.

40 MS SOARS: And is it your evidence that, I think some evidence has been given earlier about the different types of training for the Medex test device, there's training in relation to administering the test to patients, is it your - - -

THE COMMISSIONER: Well, why don't you just ask her what (not transcribable)

MS SOARS: Is it your evidence that you were trained to administer the test to patients?---Yes, that's correct.

And this, this course that you did with your sister Jessica Lazarus on 18, 19 and 21 August, 2007, did that also include some training in relation to interpreting the results?---Yes, that's correct. There's photographs as well of the training.

THE COMMISSIONER: Can we just get, we haven't got time to waste?
---Okay.

So please no comments that are gratuitous.

10

MS SOARS: Could you describe to the Commission, Ms Lazarus, the steps that you took to interpret results of clinical trials you carried out on patients from the Royal Hospital for Women?---What do you mean tests? Graphs? Like did I interpret them?

Well how were the, well is your evidence that test results from clinical trials at the Hospital for Women, Royal Hospital for Women were interpreted?
---Yes, that's correct.

20 And what process was followed to interpret those results - - -

THE COMMISSIONER: By whom? By whom?

MS SOARS: - - - and by whom?

MR ALEXIS: Well Commissioner, Ms Lazarus has given literally pages and pages and pages of evidence on all of this.

30 THE COMMISSIONER: Yes, I know.

MR ALEXIS: With respect to my learned friend, I'm not sure why we need to go through it again and - - -

THE COMMISSIONER: I mean she has actually dealt with all of this.

MS SOARS: I don't think in relation to - - -

40 THE COMMISSIONER: Why don't you ask her the specific question you want.

MS SOARS: As in suggesting - - -

THE COMMISSIONER: Lead it.

MS SOARS: Lead it. Thank you, Commissioner. Ms Lazarus, did you prepare standard graphs from, from information in the General Practitioners textbook which, for use and interpreting results of clinical trial testing done by you?

THE COMMISSIONER: I think you'll have to put that again because I don't understand that question.

MS SOARS: Perhaps the witness might be shown, Commissioner, Exhibit 2, I think it is, Professor Hacker's statement which attaches the General Practitioner textbook.

THE COMMISSIONER: A textbook?

10

MS SOARS: Sorry, I think it's Exhibit 3, apologies. It's the second statement of Professor Hacker. Can I take you to the General Practitioners textbook attached to that statement. It's described as the Medex Test Textbook for General Practitioners and to pages 23 and 24 of that document?---Yes.

Did you prepare standard graphs in relation to results based on the information in this document?---Yes.

20

What standard graphs did you prepare?---In this textbook it outlines different disorders and based on the different disorders and the trials that were conducted, for example, the breast one, the cervical one and the prostate one it outlines, if you have a look, what a disorder should look like on that particular graph. Whether it's, for example if you go to the prostate disorder, it will be a UG unilateral and that's a representation of prostate disorder on that particular graph. And, yes, shall I keep going?

30

THE COMMISSIONER: Ms Soars, I really don't know what, where this is going. When Mr Neiron gave evidence he said that you really had to, the only people properly qualified could prepare these graphs. And he, it wasn't put to him that this witness could, had the qualification to prepare the graph, so what's the point of this evidence? She's not qualified to do this.

MR ALEXIS: Can I add another problem? And that is that if it be accepted for the purpose of the discussion that Ms Lazarus prepared some graphs, whether in accordance with a textbook or not, it was never suggested to any of the doctors that the graphs as prepared were presented to them in some way for something to be done by way of interpretation.

40

THE COMMISSIONER: Yes.

MR ALEXIS: The evidence is that the material was available in electronic form on a computer and the computer graphs were shown and the evidence from Ms Lazarus was that the doctors did the interpretation and circled either a positive or a negative on the result sheet, that's the evidence and - - -

THE WITNESS: That's not correct, that's not - - -

MR ALEXIS: Well, thank you, Ms Lazarus, but I'm putting a submission to the Commissioner, it's not for you to contribute to that. Sorry, my submission, Commissioner, this is not only new but really quite irrelevant to the evidence that's already been given.

THE COMMISSIONER: Ms Soars, there is a basic problem.

10 MS SOARS: Commissioner, in relation to the submissions made against me I understand the rule in *Browne v Dunn* doesn't apply in this Commission and I submit - - -

THE COMMISSIONER: It doesn't apply but I did make it clear that the most important matters I would expect to be put and - - -

MS SOARS: That could perhaps be a matter for submissions.

20 THE COMMISSIONER: Yes, it may be a matter for submissions but there is no, I mean, it's quite clear that Ms Lazarus is not qualified to do this work.

MS SOARS: Commissioner, they're not my instructions. My instructions are just, just were prepared - - -

THE COMMISSIONER: Well, it was just put to the witness that she was qualified.

30 MS SOARS: Well, my instructions and graphs were prepared and she, and there's one in evidence that I just wanted to refer her to.

THE COMMISSIONER: I mean, you do understand the exigencies of time that we're (not transcribable).

MS SOARS: I don't expect to be overly long, Commissioner. I just have a few questions on this issue.

40 THE COMMISSIONER: I know things are difficult for you and I appreciate the way that you've conducted yourself in this inquiry, I mean that sincerely. So I don't want you to regard yourself under undue pressure.

MS SOARS: Thank you, Commissioner. Commissioner, if the witness could be shown MFI2, the tender bundle and Exhibit 9. And Ms Lazarus, if you could go to page 126 of MFI2, the bundle you've just been given. And, Commissioner, if I could just indicate that the documents starting at page 120 in MFI2 going through to page 127 are a further copy of Exhibit 9.

THE COMMISSIONER: Yes, thank you.

MS SOARS: Do you have page 126?---Yes.

Could you describe what page 126 is?

THE COMMISSIONER: We know what it is. You know what it is, doesn't it speak for itself?

MS SOARS: No, I would, it's a standard graph that you prepared - - -

10 THE COMMISSIONER: Sorry, I'm looking at 120.

MS SOARS: 126, Commissioner.

THE COMMISSIONER: I beg your pardon, my fault. Yes.

MS SOARS: Could you describe what the document is at page 126?
---That's a standard graph that was prepared to diagnose breast cancer and I've given plenty of evidence - - -

20 No, no, please, Ms Lazarus?---Yes.

Who prepared it?---I did.

And did you get it approved by anyone?---Yes, by Johel Neiron.

And how did you prepare it, what did you, what information did you use in preparing it?---Information outlined in the GP textbook.

30 With the pages 23 and 24 that I took you to before?---That's correct. Which anyone can do.

And, Ms Lazarus, is it your evidence that you also prepared standard graphs such as this for other disorders?---That's correct. For prostate and for cervical and it's just a matter of matching this picture with the graph that's printed by the patient so it's a picture match which a two year old can even do and I've given evidence of that.

40 Is it your evidence that you had the other standard graphs that you prepared for cervical and prostate cancer approved by anyone?---Yes, by Johel Neiron.

And when did you do that approximately?---2007, 2008.

And do you have a copy of these standard graphs that you prepared in relation to cervical cancer?---Yes, they're in the white folder just like these were in the white folder for breast cancer.

And which white folder are you referring to?---My patient files.

But are they the white folders at the Royal Hospital for Women?---That's correct.

And the white folders - - -

THE COMMISSIONER: Missing files.

10 MS SOARS: - - - in the Kollings building?---That's correct.

And you don't have a copy otherwise?---Not, not that I could find.

And in relation to the prostate cancer the standard graph that you prepared do you have a copy of that now?---No, I don't. I don't even have the breast one.

And, but do you say that the standard graph for prostate cancer is in the folders in the Kollings building?---That's correct.

20 And you last saw in the Kollings building?---That's correct. Just like the Strathfield breast ones were.

And, Ms Lazarus, evidence has been given in relation to a letter that Dr Gil Burton signed on 6 May, 2009?---That's correct.

30 And is it your evidence that you discussed clinical test results of patients in relation to cervical cancer with Dr Gil Burton and that you showed him the standard graph in respect of cervical cancer?---Yes, but he had to through the patient graphs. All he had to do was match the picture and I've given evidence of that that all he had to do was match the pictures.

Just explain is it your evidence that you took the Medex test result picture and you put it next to the standard graph for cervical cancer?---That's exactly how they did it for breast cancer, for cervical cancer and prostate cancer and I've already given evidence to that. All they did was match the picture and circle yes or no not negative or positive.

40 And I want to ask you in relation to Dr Vaux. You've given evidence that you showed him clinical test results, do you recall that?---Yes.

For prostate cancer patients?---Yes.

Is it your evidence that when you were showing Dr Vaux those clinical test results that you showed him a standard graph for, showing the depiction of prostate cancer according to the Medex test result, test device?---Yes, that's correct so he can circle negative or positive because he had to do it as a blind study so he couldn't know the outcome of - - -

And when you say, can I take you to page 123 in MFI2?---Yes.

And when you say circle positive or negative this is a document prepared in relation to tests done at Strathfield Hospital, is that correct?---Yes, that's correct.

And - - -

10 MR ALEXIS: Can I just renew the objection. This is an excellent example of the submission I just put a moment ago that we've been through it already, we've got pages and pages of Ms Lazarus as she keeps reminding us when answering these questions that she's already given this evidence and with respect to my learned friend I'm not sure why we need to go over it again. And I should say in putting that submission if there is anything further that needs to be explained or elaborated on then clearly enough there's no difficulty with that but we do seem to be going over material that has been the subject of Ms Lazarus' evidence already.

20 MS SOARS: Commissioner, I don't intend to be overly long and I'd like it to be clearly, her evidence to be clearly given, I think - - -

THE COMMISSIONER: This is Strathfield.

MS SOARS: That's why I'm going to move on and ask a question.

THE COMMISSIONER: I really think that it is unnecessary but on the basis of your, will you be finished by 3 o'clock?

30 MS SOARS: Yes, Commissioner, I think so.

THE COMMISSIONER: All right. On that undertaking you can go on.

MS SOARS: Ms Lazarus, I was taking you to page 123 of MFI2?---Yes.

And you've given evidence that you say down with Dr Vaux and he circled positive or negative on a document, was it a document similar to the one at page 123?---It was exactly the same apart from his name and the date and the disorder.

40 And in relation to Dr Gil Burton is it your evidence that you also sat down with him and went through test results and gave him a document similar, in respect of each test result gave him a document similar to the one at page 123?---Yes.

And that he circled positive or negative on that document?---Yes.

And just to clarify, if you go back to page 120 of MFI2, and just have a look, the first document is a consent form, that's correct?---Yes.

And you've given evidence that in the white folders for the Royal Hospital for Women that you would have a patient consent form for each patient that you tested with the Medex test device?

THE COMMISSIONER: She says that.

MS SOARS: Thank you, Commissioner.

10 THE WITNESS: That's correct. And there's a sample in this application.

MS SOARS: Thank you, Commissioner. I want to ask you some questions now about how the testing that you carried out is recorded on the Medex laptops and how you accessed the Medex laptops. It's your evidence that you were given Medex laptops by Johel Neiron, is that correct?---Yes, that's correct.

How many were you given?---Three.

20 And it's your evidence that you were given Medex test devices by Johel Neiron. Is that correct?---Yes, that's correct.

And how many were you given, the test devices?---Four. One was a spare.

And how did you access the Medex laptops? Was there a code to get access to the laptop at all?---Yes.

30 Could you describe how you accessed it and what the code related to?---It was a user name which was admin, A-D-M-I-N and the password was test, T-E-S-T.

And by inputting that into the computer what, access to what programme did you get?---Oh, the Medex programme.

Which was the Medex testing programme. Is that your evidence?---Yes.

And you had to use a hasp in order to carry out testing of patients. Is that correct?---Yes, that's correct.

40 And once you, once the hasp had been used, what's your evidence about what the hasp did as a function? What functions did the hasp have?---It was a counter for the number of patients that can be screened whilst that hasp is attached and it also allowed the programme to be opened whether the tests were on there or not.

And once test results had been, or testing had been carried out and you got a Medex graph where was that stored on the Medex laptop computer?---On the computer itself, not the hasp.

And in what, in what form was it stored? As a PDF?---Yes, it can be downloaded as a PDF or it can remain in the application and as the Commissioner pointed out to Johel Neiron in his evidence, that would be the raw data.

And is it your evidence that you, you retained PDF's of each test result on the Medex laptop?---That's correct to print them out.

10 And do you agree that you need the original hasp that you carried the tests out in order to access the test results for which, for tests carried out using that hasp?---No, that's not correct. The Medex unit comes with a little hasp. It's a black box, it's got like sponge and all that stuff on it. And the Medex unit sits in it and there's a little slot where the hasp goes and there's also another slot where the CD is kept. And that hasp to begin with is blank. And that's just simply to access the application or it may contain tests, it may not, but that, the hasp is just a counter. It doesn't hold any data. All the data is kept on the application, just as pointed out earlier.

20 Ms Lazarus, did you return the Medex laptops and test devices that you had to David and Vern Pleiksna?---Yes. I was asked by David - - -

THE COMMISSIONER: The answer is yes.

MS SOARS: Can I take you to page 7 of MFI2?---Yes.

And if you could just quickly go forward and look at pages 8 and 9 as well? ---Yes.

30 What's your understanding of what happened to the, your evidence is that you sent the Medex laptops and test devices to David and Vern Pleiksna and that you sent some TENS machines. Is that correct?---That's correct.

How many TENS machines can you remember sending?---There were two.

And, and these documents represent emails that you received back from Vern Pleiksna relating to what happened to those test units and the PC laptops. Is that correct?---That's correct.

40 And that's, your best understanding is that they were returned to the solicitor for Johel Neiron. Is that correct?---That's correct.

And your evidence is isn't it that the clinical testing that you did at the Royal Hospital for Women, PDF copies of the results were on the Medex laptops. Is that correct?---Yes, and the test results on the application as well.

THE COMMISSIONER: Well your understanding is that they were on there when you gave them to Mr Neiron's - - -?---Oh, yes (not transcribable)

- - - but you have no idea what, whether they were on when they were handed over to - - -

MS SOARS: And your evidence is - - -

10 THE COMMISSIONER: - - - to Mr, sorry, you know, you say that they were on the computers when they were handed to the Pleiksna's but you have no idea what happened to the information by the time that the computers got to Mr Neiron?---That's correct. The, the raw data can't be removed like suggested by Johel Neiron. You can't remove that application. You physically cannot remove that raw data or that, or those graphs from that particular computer. I just don't have the ability.

MS SOARS: Ms Lazarus, it's your evidence isn't it that the test, test results of clinical testing that you did in relation to patients at the Royal North Shore Hospital was, was also on the laptops that you returned to Mr
20 Pleiksna and were then sent to Mr Neiron's solicitor in a PDF form. Is that correct?---Yes, as well as the raw data.

I showed you a document earlier which was the ethics, a number of documents relating to ethics application including the body of the ethics application. Do you remember that?---Yes.

And you accept don't you that this is the body of the ethics application within this folder? That's correct?---Yes.

30 I tender this document, Commissioner.

MR ALEXIS: Can I inquire why? There's nothing in it, with respect.

THE COMMISSIONER: What does it prove?

MR ALEXIS: (NOT TRANSCRIBABLE) which is - - -

THE COMMISSIONER: I'll just find out what it proves.

40 MR ALEXIS: Yes.

THE COMMISSIONER: What does it prove?

MS SOARS: Commissioner, the original signatures are of importance.

THE COMMISSIONER: The original signatures of who?

MS SOARS: Of Neville Hacker and Donald Marsden. I say original, they're in pen, different coloured pen. And there's also a patient - - -

THE COMMISSIONER: What does that prove?

MS SOARS: Well - - -

THE COMMISSIONER: I'm not sure why you say they are the original signatures.

10

MS SOARS: Well then it's not a photocopy, Commissioner, such as we're dealing with here. We've been tendering originals where the signatures of the persons may be an issue. And I wish to follow that practice. We didn't have the original - - -

THE COMMISSIONER: But I'm not sure what it proves.

MS SOARS: Well it's - - -

20 THE COMMISSIONER: What does it prove?

MS SOARS: There may be submissions made about the similarities of the signatures. There can't be any suggestion for example that, that there was a photocopy of signatures or - - -

THE COMMISSIONER: I don't there is. But I'll take, I mean, it just saves time.

30 MS SOARS: Thank you, Commissioner. There's also consent forms that had been prepared for the Royal Hospital for Women and - - -

THE COMMISSIONER: You tell me, all right, there is a folder, a folder containing, can you please describe the documents to me?

MS SOARS: It's containing, perhaps I could, with permission, I can either out the documents I don't propose to tender because they're already in the - - -

40 THE COMMISSIONER: All right. Why don't you, why don't you at some point speak to Ms Daly and the two of you can agree on a proper description of the document and I can be informed in due course, perhaps on Monday.

MS SOARS: Thank you, Commissioner.

MS FURNESS: Might I have access at some stage?

THE COMMISSIONER: And I will simply make an order which I won't communicate to anyone that the documents which are agreed will be Exhibit 134.

#EXHIBIT 134 - DOCUMENTS TO BE ADVISED

10 MS SOARS: Can I take you to MFI2, please Ms Lazarus?---Yes.

To page 14?---Yes.

I think I only want to ask you some questions, can I ask you to go through to page 57?---57?

57, down the bottom?---Yes.

Do you have that page?---Yes.

20 Can you look at the documents at 58, 59 and 60 as well?---Yes.

Could you describe what the documents at 58, 59 and 60 are, please?
---Those are the slides that I sent through to David Pleiksna in regards to a presentation he request I make for a presentation that was presented on the 3rd, while I was in WA for Medex.

Is it your evidence that you gave this PowerPoint presentation in, in WA during the period between 3 and 5 December, 2009?---Yes, that's correct.

30 And it contained a research summary of testing that you had carried out. Is that correct?---A rough summary, yes.

THE COMMISSIONER: Sorry, what are you, I've just read the, what the document at 57, what are the other documents?

MS SOARS: It's 58, 59 and 60, Commissioner.

THE COMMISSIONER: Yes. And what do you want to do with those?

40 MS SOARS: Well I propose to tender them in due course.

THE COMMISSIONER: And what are they said to be?

MS SOARS: A PowerPoint, the slides from a PowerPoint presentation that Ms Lazarus gave - - -

THE COMMISSIONER: But what do they prove?

MS SOARS: They prove that she did testing at the Royal North Shore and the Royal Hospital for Women as described.

THE COMMISSIONER: They don't. How could they prove that?

MS SOARS: Well, they're relevant in that, they're contemporaneous documents around the time.

10 THE COMMISSIONER: Well, how do I know they're contemporaneous?

MS SOARS: Because they, they came from Mr Pleiksna.

MR ALEXIS: No, they didn't, they came from (not transcribable)

THE COMMISSIONER: How do I know that?

MS SOARS: Well, because the email at page 51 is from David Pleiksna to -
- -

20 THE COMMISSIONER: How do I know that?

MS SOARS: It's been produced to me by my instructing solicitor and, as a copy of an email that was received by him.

THE COMMISSIONER: Oh, I see, it's received by your solicitor.

MS SOARS: It does say that on the face of it, Commissioner.

30 THE COMMISSIONER: Are you telling me you - - -

MS SOARS: John O'Shannessy.

THE COMMISSIONER: All right. I will accept it then that the email was sent to Mr O'Shannessy - - -

MS SOARS: Thank you, Commissioner.

THE COMMISSIONER: - - - by Mr Pleiksna and - - -

40 MS SOARS: It's the documents at 58, 59 and 60 are the attachment to the email and it's referred to in the body of the email.

THE COMMISSIONER: I still don't quite understand how it's said, where does it say that this is a, that these documents are contemporaneous?

MS SOARS: Well, it's, in my submission the construction of the email and the document is that this the slideshow given by Ms Lazarus during, during

the GP and operator training. She's also given evidence of that between 3 and 5 December, 2009.

THE COMMISSIONER: But the email doesn't say that.

MS SOARS: It refers to that in part and Ms Lazarus has also given evidence that that slideshow presentation that she gave during that period.

10 THE COMMISSIONER: It says a brief slide presentation was used. Her part was limited to how to physically conduct et cetera. Now that's got - - -

MS SOARS: And a copy of - - -

THE COMMISSIONER: These, these slides, these slides have nothing to do with that.

MS SOARS: But it's the next paragraph, Commissioner.

20 THE COMMISSIONER: A copy of her report.

MS SOARS: Ah hmm.

THE COMMISSIONER: Well, I don't, I don't know that means. Her report?

MS SOARS: Well, I think - - -

THE COMMISSIONER: Are you saying - - -

30 MS SOARS: I'm saying - - -

THE COMMISSIONER: Are you saying that these are to be construed as being the documents to, these, these slides constitute her report which was, which in turn constitutes the brief slide presentation referred to in the first sentence of the email?

MS SOARS: Yes, Commissioner.

40 THE COMMISSIONER: Well, I don't - - -?---These slides are also - - -

Just be quiet. I'm really trying to be as patient with you as I can but my patience is getting near the end of its tether. Please do not interrupt again in an uncalled for?---I was - - -

You've got a barrister who is acting for you?---Okay.

Please be quiet. Yes, I will admit this document, these documents and they will be, I'm not sure how you want to deal with this, Ms Soars, because we've got a lot of documents (not transcribable) tendered - - -

MS SOARS: I have, Commissioner, whether - - -

THE COMMISSIONER: - - - and so are we, how are we going to deal with it?

10 MS SOARS: Well, whether you wish - - -

THE COMMISSIONER: Because have you got more documents you want to tender? I mean, I'm happy for this to go in with the evidence as a separate exhibit number but if there are going to be a number of other documents, the best, the easiest way would be to remove the documents that are not being tendered and simply tender the folder as an exhibit number with whatever it contains.

20 MS SOARS: Yes, Commissioner. Commissioner - - -

THE COMMISSIONER: Shall we deal with that at the end of, of our, of the evidence of Ms Lazarus?

MS SOARS: Commissioner, my intention was to tender all of the documents in this bundle.

30 THE COMMISSIONER: Well, you're going to have difficulty with that. I mean, you may be able to but I know that that's not going to be, that's not going to go through without objection.

MS SOARS: Yes, Commissioner, I mean some of them Ms Lazarus has already been asked questions about (not transcribable)

THE COMMISSIONER: I understand that.

MS SOARS: Is it convenient to - - -

40 THE COMMISSIONER: Well, why don't we, instead of, why don't you finish the witness and then we'll deal with what documents go in.

MS SOARS: The tender, thank you, Commissioner.

Tab, tab 3?---Can, can I said.

Commissioner, you've previously suggested the witness could stand giving her evidence so we can continue.

THE COMMISSIONER: We'll adjourn for five minutes.

SHORT ADJOURNMENT

[2.55pm]

MS SOARS: Commissioner, the plan I propose to follow is just to ask a few further questions about the document and then Mr Alexis and I are going to have a discussion about what documents should and shouldn't be tendered.

10

THE COMMISSIONER: Well, when will that happen?

MS SOARS: I can do that this afternoon.

MR ALEXIS: When, when we adjourn.

THE COMMISSIONER: Okay.

MS SOARS: And, and then we'll deal with that in some way as between
20 counsel - - -

THE COMMISSIONER: Yes, that's a good idea, thank you.

MS SOARS: - - - to avoid taking up time now.

THE COMMISSIONER: Thank you.

MS SOARS: I'm just going to, if I could, Commissioner, I'm moving
30 through the tabs, I'm at tab 3 and I'm just going to ask any questions I wish
to in relation to the documents.

THE COMMISSIONER: Yes, whatever you, however you wish to proceed.

MS SOARS: Just a general question, Ms Lazarus, the description of the
documents in tab 3 is that they're a bundle of documents from, printed from
your email accounts?---That's correct.

40 Have you been through the documents at tab 3, you've, you've helped in the
preparation of the documents at tab 3, haven't you?---Yes.

And did you print them out from your email accounts?---Yes, that's correct.

And provided them to be tendered?---That's correct.,

I, I, I propose to just, the documents speak for themselves, Commissioner,
and I don't propose to ask any questions.

THE COMMISSIONER: Yes, there'll be, I assume there'll be questions of relevance about them but other than I accept that they speak for themselves.

MS SOARS: Thank you, Commissioner.

And I now propose to deal with the documents in tab 4, do you have that, Ms Lazarus?---Yes.

10 The first document starting at page 111, that's a record of your previous enrolment as a PhD student in 2006, is that correct?---Yes, that's - - -

THE COMMISSIONER: It's not in dispute.

MS SOARS: It's not in dispute, thank you, Commissioner.

MR ALEXIS: (not transcribable)

20 MS SOARS: Sorry, as my learned friend pointed out, it's a record of a financial statement given to her as a PhD student in 2006.

THE COMMISSIONER: Yes.

MS SOARS: And the next document at page 113, that's the ethics approval in respect of Strathfield, is that correct?---Yes, that's correct and the date on that is the - - -

THE COMMISSIONER: That's, I don't know what that's, all right?---Is 31 January, long after I started the first, screening the first patient.

30 MS SOARS: The next documents starting at 115 I think form part of Exhibit 9, the Strathfield documents?---That's correct.

40 The next document starting at page 128, could you describe what that document is, please, Ms Lazarus?---128, that's the protocol for cervical cancer, that was presented to Gil Burton in a meeting where there was a discussion about a pilot study and a longer study and on the reverse of the original, 'cause I've only got the photocopy, on the original, on the reverse of each page in his handwriting for about four, three, four pages he's outlined instructions for me in which he also outlines that a pilot, 'cause I've written in the protocol a pilot of 50 but he's actually outlined that a pilot of 20 patients are to be conducted, is to be conducted and that - - -

THE COMMISSIONER: Do you wish the witness to go on?---Yes.

MS SOARS: Sandra, I'm sorry, excuse me, I withdraw that, Ms Lazarus, firstly, Commissioner, could I, I've indicated to my friend that I would be doing this, could I call for the original of the clinical study protocol because the, the copy is unclear.

MR ALEXIS: (not transcribable)

MS SOARS: I did this morning. Could I call, and I propose to tender that in due course, Commissioner.

THE COMMISSIONER: But I don't know what this proves. What does it prove?

10 MS SOARS: Well, there, there is evidence given by both Ms Lazarus and Ms, Dr Gil Burton that they had discussed a clinical protocol document. I put a clinical protocol - - -

THE COMMISSIONER: But there is one in evidence, isn't there?

MS SOARS: I put it to Dr Burton and he said that wasn't the one and now having obtained from Ms Lazarus' documents seized by ICAC Ms Lazarus' evidence is that this is the clinical study protocol that she discussed and I wish to tender it and her evidence as given is that Dr Gil Burton wrote
20 handwritten comments on it and - - -

THE COMMISSIONER: And that, and that is in his handwriting?

MS SOARS: It, that's my, that's, that's Ms - - -

THE COMMISSIONER: Well, I think you better just lead that evidence.

MS SOARS: Thank you, thank you, Commissioner.

30 Can I show you a document which is headed Clinical Study Protocol Cervical Cancer, an original document?---Yes.

Ms Lazarus, can you just confirm that that is the document you were just referring to, the original of the document that you say you discussed with Dr Gil Burton and that has his handwritten comments on it. Is that correct?
---Yes, that's correct, the three pages.

THE COMMISSIONER: When did you first see that?---When I was allowed to examine my, to examine my documentation.
40

When was that?---After the two and a half weeks of examination. It was, I came across it and I remembered and his instructions are at the back, instruct from 1 to 4 and the first instruction is offer a preliminary study of 20 patents.

No, I just asked you when you saw it. I didn't ask you to make a speech?
---Sorry.

MS SOARS: Commissioner, if I could just indicate my instructing solicitors didn't have that document until the adjournment after the two-week hearing. That was when an arrangement was made to inspect documents at ICAC and ICAC helpfully allowed that inspection.

THE COMMISSIONER: Did anyone ask before that?

10 MS SOARS: No, Commissioner, and in my submission it wasn't, we didn't, there wasn't time to inspect because of the late instruction of the legal team but I understand. Page - - -

THE COMMISSIONER: The only thing it was never put to, this was never put to Professor Burton.

MS SOARS: Is wasn't, I wasn't aware of it, Commissioner, and I didn't think - - -

20 THE COMMISSIONER: I understand that. No, no, I understand that, it's not a criticism of you but it's an issue.

MS SOARS: Yes, Commissioner.

THE COMMISSIONER: I mean, I haven't seen it, I don't know what it says.

MS SOARS: Well, it's in his handwriting and so - - -

MR ALEXIS: Well, so your client says.

30 MS SOARS: Yes, Commissioner. Could I tender that document, please, Commissioner.

THE COMMISSIONER: Yes. The clinical study protocol with notes in handwriting on the last two pages is Exhibit 134. So Exhibit 134 will be the folder, the true description, the correct description will go on Monday. The clinical study protocol with the notes on the last two pages is Exhibit 135.

MS SOARS: Thank you, Commissioner.

40 THE COMMISSIONER: And do you say that the handwriting on this document is that of Professor Burton, Ms Lazarus?---That's correct.

And what about the first page, is that his handwriting as well?---That's all his handwriting.

Wherever one sees handwriting in this document it's Professor Burton's? ---That's correct, in a discussion when we were discussing, he went around making the changes and instructing what I should follow and there's

numbering from 1 to 5, 5 is missing, he didn't write a five, fifth comment but from 1 to 4 in the first comment is of a preliminary study of 20 patients and, and ethics and he's made a question mark on the ethics which, and verbally he indicated to me that wasn't required and hence supported by the question mark on ethics, the second last page.

10 MS SOARS: Commissioner, could I just indicate that due to a copying error that a page of the document that's just been tendered as Exhibit 134 didn't go into the bundles that I handed up earlier, sorry Exhibit 134, and it's a page of Exhibit 135 didn't go into that exhibit and I can update your folder in due course but I won't do that now.

THE COMMISSIONER: Ms Soars, you have lost me entirely. Are you saying that there is another page of this document - - -

MS SOARS: No, the original is correct, Commissioner, the copy of the original in our bundle is missing a page and - - -

20 THE COMMISSIONER: The document in the bundle is not helpful because it doesn't contain the notes.

MS SOARS: It does at page 137 and 138 and there's an additional page that didn't go in of notes.

THE COMMISSIONER: So 137 and 138 are the last two pages are they?

30 MS SOARS: Yes, Commissioner. And there's an additional page that didn't go in unfortunately but it was on the original and Ms Daly helpfully gave us a further copy.

THE COMMISSIONER: All right.

MS SOARS: Can I just take you quickly to the document at page - - -

THE COMMISSIONER: When was this discovered?

MS SOARS: It was in the seized documents from Ms Lazarus held by ICAC.

40 THE COMMISSIONER: I understand that but when did your side discover this fact?

MS SOARS: When they inspected this during the break after the two week hearing.

THE COMMISSIONER: Why weren't we told?

MS SOARS: And then it was included in the tender bundle which was provided the Thursday before.

THE COMMISSIONER: Yes, but we could've had Professor Burton here today.

MS SOARS: Commissioner, - - -

THE COMMISSIONER: Why weren't we told?

10

MS SOARS: Well, it was included in the bundle, Commissioner.

THE COMMISSIONER: How on earth do we know that this is supposed to be Professor Burton's handwriting? Only your client knows this of the people who are sitting in this hearing room. We could've had Professor Burton here today or at some other time.

MS SOARS: Yes, Commissioner.

20 THE COMMISSIONER: Now it's presented at 1 minute to midnight when you've known it, what, for how long?

MS SOARS: Some time last week is my rough, my estimate, Commissioner.

THE COMMISSIONER: And you're leading this evidence and you're going to make submissions without giving Professor Burton the opportunity of answering this?

30 MS SOARS: I think it's part of the difficulty of the way this hearing unfolds because all material isn't exchanged in advance (not transcribable).

THE COMMISSIONER: I know. But if you get documents that you're going to use then I'm afraid it's your obligation to tell the Commission as soon as possible.

MS SOARS: We included them in the tender bundle, Commissioner.

40 THE COMMISSIONER: Ms Soars, please don't put it back to me. It's really, it's not an answer because this has got handwriting on it. How does the Commission know that this is supposed to be the handwriting of Professor Burton?

MS SOARS: Commissioner, I'm happy if an inquiry is made and that's communicated by letter as to whether Dr Burton agrees with that or not and that letter can be part of the evidence and I wouldn't propose to cross-examine Dr Burton about his reply.

THE COMMISSIONER: Well, if it is his he may want to explain some things. What then?

MS SOARS: Commissioner, it wasn't my understanding that it was a practice to recall witnesses and so I apologise if I should've indicated to the Commission so it could make that decision.

THE COMMISSIONER: We've been recalling witnesses throughout this hearing.

10

MS SOARS: In relation to only very important matters but - - -

THE COMMISSIONER: Well, isn't this important?

MS SOARS: Commissioner, I don't think, in the terms Dr Burton agrees that he had a conversation with Ms Lazarus and he received that the meaning of what the notes is is really - - -

THE COMMISSIONER: Is obscure?

20

MS SOARS: Correct. And I don't - - -

THE COMMISSIONER: All right. I understand.

MS FURNESS: Unfortunately I don't and I appear for Dr Burton.

THE COMMISSIONER: I know. Have you seen it?

MS FURNESS: No. I've certainly seen it, no idea what it was, who the author was or what it even said, it's a very poor copy and its relevance completely - - -

30

THE COMMISSIONER: Show this to Ms Furness please.

MR ALEXIS: While that's being passed down to Ms Furness and if she doesn't mind me interrupting ever so slightly having tried to understand the purport of the notes it's not at all apparent to me what the significance of them is if there is any significance to be attached to them. And I remind the Commission that Dr Burton's evidence was that he did receive a protocol, it was passed on to Dr Valmadre who had the relevant patient pool and the suggestion of Ms Lazarus was that she speak with Dr Valmadre which she did. Dr Valmadre confirmed that. Dr Valmadre went on to say that she never heard from Ms Lazarus again. Now, if there's some point to be made about these notes, because as I say it's not apparent what the point is - - -

40

THE COMMISSIONER: Well I understood Ms Soars to say that the meaning, any inference to be drawn from the notes is obscure and really can't advise or detract either party's case.

MS FURNESS: Well then it shouldn't be tendered with respect, Commissioner. In my submission no inference can be drawn from this document in the absence of giving Professor Burton the opportunity to give evidence about it. And if the case is that we bring - - -

THE COMMISSIONER: Well I'm weighing that up Ms Furness.

MS FURNESS: Well my submission is it shouldn't be.

10

MR ALEXIS: Which is why I, I put the question and perhaps put it rhetorically by way of submission what is the point to be made in due course in submission as to what one gets from the handwritten notes. If the answer to that is one doesn't get anything from the handwritten notes, then why are we wasting our time? And - - -

THE COMMISSIONER: Ms Soars, what is the answer to all of that?

20

MS SOARS: Well Commissioner that there was a protocol that was discussed and the type written form of it, well there's no evidence at the moment that the exact type written form of it.

THE COMMISSIONER: All right. I'm sure that Mr Alexis will accept that there was a type written protocol that was discussed.

MR ALEXIS: Yes. He said, he said that he received it one day, it was in his in-tray I think was the expression that was used.

30

THE COMMISSIONER: And I think Ms Furness will accept that.

MS SOARS: And, and, and in respect of the page, one of the handwritten pages refers to a preliminary study of 20 patients - - -

THE COMMISSIONER: Yes, but it's not clear what, what that means. It's not clear who said it and what flows from that.

MS SOARS: Yes, Commissioner. Commissioner, my instructions are - - -

40

THE COMMISSIONER: And I mean there doesn't, I - - -

MS SOARS: And there's a reference to ethics with a question mark next to it.

THE COMMISSIONER: Yes, I know.

MS SOARS: Thank you, Commissioner. My instructions are to, to request to tender that document. I think it has been given a number.

THE COMMISSIONER: All right. Well what submission are you going to make about it?

MS SOARS: That, that it confirms Ms Lazarus' evidence that she gave a clinical study protocol which, which was in this form and there was discussion about a pilot study of approximately 20 and a discussion and Ms Lazarus has given evidence about the, what was said about the ethics application.

10 THE COMMISSIONER: Okay. Well let's take it one by one. The first thing is that there is a, that the protocol was given. The written protocol was given.

MS SOARS: Yes, in that form.

THE COMMISSIONER: The second thing is that it was discussed. The third thing is that in particular 20 patients were discussed or mentioned.

MS SOARS: A pilot study, yes.

20

THE COMMISSIONER: Pilot study, where does it say pilot study?

MS SOARS: Preliminary study.

THE COMMISSIONER: Or a preliminary study of 20 patients was, was mentioned by somebody.

MS SOARS: Yes, Commissioner.

30 THE COMMISSIONER: And fourthly, that some question was raised about ethics.

MS SOARS: Yes, Commissioner.

THE COMMISSIONER: Those are the four points. Anything else?

MS SOARS: I'll have to just obtain instructions, but - - -

40 THE COMMISSIONER: No, no, no. Look this might be the modern view. In my day counsel used to decide what the arguments were.

MS FURNESS: Well Commissioner, I don't need any instructions to put my client's position, which is that if any of this document, that is the printed document or the handwritten pages is to be relied upon by my friend - - -

THE COMMISSIONER: Well, yes, yes, then you're objecting to it.

MS FURNESS: Yes.

THE COMMISSIONER: But those four points that I raised are (not transcribable) as I understand it, they're (not transcribable) sought to made, to be made from that document and I don't think that any of that reflects adversely on Professor Burton.

MS FURNESS: The question mark ethics has a potential to. That is entirely ambiguous.

10 THE COMMISSIONER: No, no, that's why it doesn't, because it's entirely ambiguous.

MS FURNESS: Well if, if there are to be submissions made about question mark ethics being in Professor Burton's handwriting on this document, that submission alone has the potential that is adverse to my client and it's most unfair.

THE COMMISSIONER: In what way is it potentially adverse to your client?

20

MS FURNESS: Because this witness has given evidence that he among others permitted her, perhaps even encouraged her to proceed without ethics approval.

THE COMMISSIONER: Yes, but that, the statement ethics with a question mark doesn't support that. Well, that's my opinion and that's what counts.

MS FURNESS: Well, that may well be your current position, Commissioner, and I appreciate you indicating that.

30

THE COMMISSIONER: Well, I don't think that Ms Soars is submitting any different. That's why I asked her. Because it's not clear what that means, whether he has, it might simply be a question whether he asked have you obtained ethics approval.

MS FURNESS: Well, the document shouldn't be tendered, in my submission, if it is ambiguous and can be clarified but won't be by the absence of my client giving evidence. To produce this document at the last minute without indicating the proposed author of it and then to expect it to be tendered without objection or further evidence is most unfair and unreasonable in my submission, Commissioner.

40

THE COMMISSIONER: Yes, thank you. Ms Soars, I really don't think that the document advances your case.

MS SOARS: Commissioner, I just formally press the tender.

THE COMMISSIONER: All right. The tender is rejected.

MS SOARS: Thank you, Commissioner.

THE COMMISSIONER: And the tender is rejected because firstly, I don't think it advances your case to any significant extent and secondly, I think that it's unfair on Professor Burton and those are the reasons for which it is refused.

10 MS SOARS: Thank you, Commissioner. The next document is a document headed Donation Receipt, it's at page 139. I just propose to indicate to my learned friend I propose to tender that but not ask my client any questions about that.

THE COMMISSIONER: What's the point of it? What does it prove?

MS SOARS: Excuse me for one moment, Commissioner.

THE COMMISSIONER: This is the recent kind donation?

20 MR ALEXIS: Can I remind you, Commissioner, that when Michelle Lazarus was cross-examined on the deductibility of the \$9,326 referred to as set out in the financial statements and income tax return for Wish Consulting for the relevant year of income she accepted that it was a deduction that was falsely claimed because she'd already accepted that the payment to the hospital was not a donation. This document seems to indicate that notwithstanding that evidence a receipt was obtained from St Vincent's Hospital nonetheless describing the payment as a donation. Now,
- - -

30 THE COMMISSIONER: I think that it is relevant to the extent that it suggests, it supports Ms Lazarus' evidence that she used the word donation in her tax return because she got documents from St Vincent's Hospital which to that effect, so even to the extent that it supports her credibility it's relevant.

MR ALEXIS: Yes, I accept that but one would - - -

THE COMMISSIONER: So I'll admit it.

40 MR ALEXIS: One would need to know a little about - - -

THE COMMISSIONER: I'll admit it for that purpose.

MR ALEXIS: Thank you.

MS SOARS: And the next document starting at page 140, Ms Lazarus, could you explain what that document is?---That's in relation to lab safety that was completed at the Kolling building for - - -

Training that you completed, is that correct?---Yes, training that I completed for lab safety in relation to the protonomic - - -

THE COMMISSIONER: I'll accept that.

MS SOARS: Thank you, Commissioner. And to the next tab, tab 5, Ms Lazarus, these are documents you printed out from the internet relating to conventional testing for prostate cancer initially and then conventional testing for breast cancer, is that correct?---And cervical cancer, that's correct, because there was an error made, Commissioner, I asked a gynae person about FN which is Fine Needle procedure and that's actually related to breast cancer and not gynaecological disorders. So I just wanted to make sure there was a clear understanding.

THE COMMISSIONER: I'm sorry, I'm not sure what the relevance of these documents are.

MS SOARS: They related to the different types of conventional testing for the different cancers, Commissioner, against which the Medex test device could potentially be compared.

THE COMMISSIONER: Why is that relevant?

MS SOARS: So that there's information there from the relevant cancer foundations as to what that testing involved and what it means.

THE COMMISSIONER: What do you say about that Mr Alexis?

MR ALEXIS: In light of the explanation that Ms Lazarus gave, particular her reference to the mistake concerning fine needle procedure, I would encourage the receipt of this material.

THE COMMISSIONER: All right, let's admit it.

MS SOARS: Commissioner, yesterday, yesterday I think questions were asked or the day before about Westpac loan applications and Meriton supporting letters that were provided and I called for those and was told to deal with them in reply. I have indicated that I would be asking for them again and I'm not sure if they are available now.

THE COMMISSIONER: What documents are they?

MS SOARS: They were part of supporting documentation Ms Lazarus, Sandra Lazarus was supplied to the banks in support of loan applications, Meriton rental letters.

MR ALEXIS: I think we're still looking for that Commissioner. What was tendered was the form of loan application as they were produced by the

banks. We need to search the material produced by the banks in response to the summons' to see if there was any further material of the description called for and that search is still being done as I understand.

MS SOARS: I'm happy if that's deal with between Counsel Commissioner.

THE COMMISSIONER: Yes, very well.

10 MS SOARS: Commissioner, I think I'm on the last topics which just relate to some diaries that were, one entry that was shown to Ms Lazarus and I want to ask her some questions about some other entries in the diaries.

THE COMMISSIONER: Yes.

MS SOARS: These are from diaries ceased by ICAC.

THE COMMISSIONER: Yes.

20 MS SOARS: Could I have leave to approach.

THE COMMISSIONER: Yes.

MS SOARS: Ms Lazarus, I'm showing you your 2007 diary ceased by ICAC and I'm showing you an entry of 20 July 2007 and there's handwriting there, 10.30 meeting with Dr Hacker, RH Women level 2 and a phone number. It's your evidence, isn't it, to the best of your recollection you had a meeting with Professor Hacker on July 20, 2007 at approximately 20.30?---Yes, that's correct.

30 And Ms Lazarus I'm showing you another entry of 10 August 2007 which has 11.30 Hacker RH, RWHR, it's your evidence isn't it that you had a meeting with Professor Hacker at approximately 11.30 on 10 August, 2007 isn't it?---Yes.

And I'm showing you another entry for 16 August 2007 in your diary which says Hacker 10.00 RWH and it's your evidence isn't it that you had a meeting with Professor Hacker on 16 August 2007 at 10.00am?---That's correct.

40 And I'm showing you an entry for 23 October 2007 which says 10.00am Hacker, Level 2 RWH and it's your evidence isn't it that you had a meeting with Professor Hacker on, at 10.00am on 23 October 2007. Is that correct? ---Yes.

Commissioner, I seek leave to uplift this and photocopy the pages.

THE COMMISSIONER: What for?

MS SOARS: So I can photocopy the pages.

THE COMMISSIONER: You've got these - - -

MS SOARS: Just so that I can tender, perhaps I can just - - -

THE COMMISSIONER: But the evidence is on the transcript.

MS SOARS: Thank you Commissioner.

10

And I'm showing you your 2009 diary that was ceased by ICAC. That's correct isn't it?---Yes.

That's your diary. And you were asked questions about an entry on 19 January 2009 in relation to a meeting with an urologist that's correct, isn't it?---That's correct.

20

And you turn the page and there's another reference on 20 January 2009 at 10.00am meeting with urologist for the firm approval, that's what's there isn't it?---That's correct.

And who, to the best of your recollection, did you meet with on 20 January 2009?---Um, I've given evidence in regards to that but – to the best that I - - -

No, you gave evidence Ms Lazarus in relation to 19 January 2009, just to remind you. I'm asking you a question about 20 January, 2009 - - -

30

THE COMMISSIONER: Is it the same urologist you saw the day before? ---It would be David Dalley.

MS SOARS: From Strathfield Hospital.---From St Vincent's.

St Vincent Hospital. And your evidence is this is the same urologist from the day before, 19 January, 2009?---That's correct, I was chasing up a document, that's how I recall.

If I could just have one moment with my client Commissioner.

40

THE COMMISSIONER: Yes.

MS SOARS: Thank you Commissioner, that's all the questions I wish to ask Ms Lazarus.

THE COMMISSIONER: Yes, thank you. Mr Alexis, do you have any - - -

MR ALEXIS: Yes, thank you Commissioner.

Ms Lazarus, do you recall that Ms Furness asked you some questions about the evidence that you had given back on 14 February 2011 concerning the answer in the affirmative to ethics approval in relation to the registration of the cancer study at the Royal Hospital for Women. Do you recall that?
---Yes.

And you recall that she drew your attention to your reference in the answer at page 24 of the transcript to the full ethical approval that you had obtained for Concord Hospital?---Sorry, can I have a look at the transcript?

10 Well, let me read it to you?---Okay.

In answer to the question that I asked you about whether Commission should understand that your answer to the particular question about ethical approval was based on the experience that you'd had about, at Strathfield, not the result of anything Professor Hacker told you and your reply was in these terms, "No, that's correct. It's, here it says any one committee in regards to the clinical study and there approval, full approval from the Concord ethics committee for the Medex research trials so based on that I said, yes." All right?---that's correct.

You remember that?---Yes, that's correct.

Now, in your tender bundle could you turn please to page 113 behind tab 4?
---113.

113, tab 4. And do you see that you've reproduced in your bundle a letter from Concord Repatriation General Hospital - - -?---Yes.

30 - - - which is addressed to Professor Carmalt dated 31 January, 2008?---Yes, that's correct.

And is that the approval to which you were referring when you were explaining the way in which you dealt with the question of ethical approval on the clinical trial register?---Yes, I had to submit that to Neville Hacker.

I didn't ask you about submitting anything to Neville Hacker. What I asked you is whether or not the document at page 113 of your tender bundle is the approval that you said that you had received from or with respect to Concord Hospital?---Yes, dated 31 January, 2008.

40 THE COMMISSIONER: Your answer's yes?---Yes.

And just so that we're clear, if we look at the third paragraph of that letter, it confirms with pleasure that the committee has granted ethical approval of this research project, do you see it, see that?---Yes.

And so it was this document, was it, that informed the decision you made as you told me back on 14 February, 2011 to answer the ethics question on the clinical trial register in the affirmative. Is that so?---A decision made in collaboration with Neville Hacker, yes, that's correct.

Can I suggest to you that the evidence that you gave me on that occasion must be false because as we established yesterday you'd made that entry on 19 January, that is to say, about 11 days before the approval had been issued as we see at page 113 of your tender bundle?---Yes, that's correct.

10

Thank you?---It wouldn't be false, it will be incomplete. This is where the letter is issued. They have been told, they get told about the ethics approval a lot earlier, that is just the letter formalising it.

Now, at page 51 of your tender bundle - - -?---Yes.

- - - you've provided us with a copy of an email that Mr Pleiksna sent to your solicitor?---My solicitor? Oh, O.K. 51, sorry.

20 Mr O'Shannessy's your solicitor, isn't he?---Yes, yes, 151.

Well, one of your solicitors, is that so?

MS FURNESS: Sorry, what was that page?

MR ALEXIS: Page 57 of the tender bundle, sorry, there's two pages I think I referred to the first of the two. It's page 57 of 156, do you have that?
---Yes.

30 And he provided under cover of that email a PowerPoint presentation or slides as I think you've described it in your earlier evidence, that you used as part of some presentation in Perth between 3 and 5 December, 2009, is that so?---That's correct.

And if we just look at those slides and if you look in particular to those set out on page 59 - - -?---Yes.

- - - do you see running across the top of the page with respect to the subject of prostate cancer - - -?---That's correct.

40

- - - there's reference to the Royal North Shore Hospital and in the second bullet point a reference to 48 patients with abnormal PSA screened with the Medex test?---That's correct.

And is that a reference to the document that Ms Furness was asking about this morning, this is the letter that is purportedly signed by Dr Vaux of 12 June, 2009?---48, it should say biopsy as well.

Well, leaving aside those sorts of - - -?---Yes.

- - - differences what we see in your PowerPoint presentation that was given in Perth in late 2009 was a presentation based on effectively the content of that report that you say was signed by Dr Vaux?---That's correct.

And if we come down to the material further down the page we see that you've bullet pointed Royal North Shore Hospital and Royal Hospital for Women, do you see that in the first bullet point?---Yes, that's correct.

10

And then we see the reference in the next bullet point to ten positively diagnosed patients were screened with the Medex test, do you see that? ---That's correct.

And that's a reference to the content of the letter that you say was signed by Dr Burton?---Yes, that would be - - -

20

And so when we see the presentation and I'm just putting to one side the material on the next page concerning breast cancer, you were presenting the results of the content of those two letters, that is, the one from Dr Vaux and the one from Dr Burton, is that so?---That's correct.

In relation to cervical cancer on page 59 is it the case that the only results that you were able to report on at this presentation insofar as cervical cancer is concerned is the ten positively diagnosed patients as referred to in the letter purportedly signed by Dr Burton?---In terms of that, the ten patients that I done in relation to the letter?

30

Mmm?---That's all it does. It shouldn't say Royal Hospital for Women 'cause it only relates to the results done at Royal North Shore.

Well, I'm just going to ask you about that. Why, why in connection with the ten positively diagnosed patients do you identify in connection with the Royal North Shore Hospital and the University of Sydney the Royal Hospital for Women?---Just in relation that there is a cervical cancer trial being conducted at the Royal Women's Hospital but like it should say biopsy and prostate cancer, that should be removed, Royal Hospital for Women.

40

Well, let's not bother about biopsy and the like, this is a presentation that you gave to the directors of Medex Test Corporation in Perth in late 2009? ---That's correct.

Now, if we were to accept your evidence concerning what you did at the Royal Hospital for Women you'd completed 200 testings on 200 patients - - -?---For Royal Hospital for Women, I didn't say.

- - - at the Royal Hospital for Women?---I didn't say I completed 200 patients.

I'm sorry, I thought you accepted from me yesterday that you gave evidence that you hadn't done 450 tests which - - -?---That's correct.

- - - which the arithmetic result of multiplying - - -?---That's correct.

10 - - - nine invoices by 50 tests would produce - - -?---That's correct.

- - - you did 200?---I had not completed 200. I have given evidence of that, of how many patients that were completed.

Well, why don't we see any reference to this in your presentation to the Medex Test Corporation in your PowerPoint presentation?---Like you said, I'm only referring and I am referring to only the letters that I had given to Medex.

20 I see, so - - -?---That's what its reflecting.

I see. So, so you didn't include in your presentation any of the work that you'd done at the Royal Hospital for Women. Is that what we - - -?---That's correct.

I see. And is it the case that all you were reporting to the directors of Medex Test Corporation in late 2009 was the content of the Vaux's letter and the Burton letter and nothing else?---Just the result, results from the trials that were completed for them, yes, that's correct.

30 One final thing, you gave some evidence that you at one point spoke with a Professor Jennifer Peat, that's P-E-A-T?---Yes.

And you spoke to her at Concord Hospital, didn't you?---That's correct.

And that was in about August or September 2008 in relation to the work that you'd done at Concord?---I would be able to give you an exact time, sorry.

40 Well leave aside the time, but the content of the discussion you had with her related to work that you had done at Concord?---It was a general conversation not, like I said we used examples. I'm just - - -

The subject matter of the discussion related to what you had done at Concord?---If you're talking about the first meeting, yes. As, in results to other meetings there were discussions about other, other trials conducted and other numbers obtained from those.

But they were tests conducted at Concord?---No, sorry, that's very unclear. What do you mean tests conducted at Concord?

Well you never spoke to her, and let me put this to you very clearly, you never spoke to her, and your evidence was that you spoke with her and derived some assistance in the calculation of test results?---Yes.

My proposition to you is that that related only to results that you obtained from some screen tests you did at Concord Repatriation Hospital?---I did no tests at Concord.

10 Didn't you?---No.

I see. And did you, okay, thank you. I have no further questions?---That was Strathfield Private.

THE COMMISSIONER: That was at Strathfield Private. So did you speak to Professor Peat about this at Strathfield Private?---Yes, in the first occasion, yes, that's the only results I had.

20 And did you speak to her on other occasions about the other tests you'd done at the other hospitals?---Yes, 'cause I was always unclear as to the calculations and numbers and things, so there was discussion. And there's emails to support that discussion. Some emails, I don't have all - - -

MR ALEXIS: Now before I sit down, Ms Lazarus, would you go back to that PowerPoint presentation to the Pleiknsa's of late 2009 at page 60, please. I think I ask you some questions about what's at page 59 of your bundle. But could you turn to page 60?---Yes.

30 Now do you see with respect to the cervical cancer box in the top right hand corner that you set out there the sensitivity results relating to the preliminary research trial that you say that you did with Professor Burton. Is that so? ---That's correct.

And so we see for example that the sensitivity that you have reported there is 89 per cent?---Yes, that's correct.

Now if you open Exhibit 1 to page - - -?---I don't have Exhibit 1.

40 All right. It will be obtained for you. But you're going to be shown Exhibit 1 at page 277, which is Dr Burton's letter which you say he signed?---So what page is that?

277. Now if you look in the letter that you drafted in which Ms Furness asked you some questions about earlier today, you'll see in the third paragraph that you there refer to the sensitivity of 80 per cent?---Yes, that's correct.

So how should we understand that that sensitivity changed if this PowerPoint presentation was based on this document, how that sensitivity changed from 80 per cent to 89 per cent?---The same way, in my calculation error that the 15 plus 5 has changed for the prostate cancer as opposed to the letter outlined with Kenneth Vaux, where it says 5 plus 3 rather than 5 plus 5.

10 Well Ms Lazarus, does it follow from what you've just said that what you presented to the Pleiksna's as part of this PowerPoint presentation does not accurately reflect the sensitivity reported in this letter which you say Dr Burton signed?---It also doesn't reflect the prostate cancer numbers as well.

Could you answer my question, please? I didn't ask you about prostate?---It doesn't, no it doesn't for either one of them, simply because of the number - - -

20 There are two gross misrepresentations I would suggest to you. If one was to move from Dr Burton's document and by that I mean of course the document that you say he signed?---Yes.

And what you presented as part of your PowerPoint presentation to the Pleiksna's in late 2009, the first is that you've misrepresented the sensitivity, even accepting that as accurate in the letter as a sensitivity of 89 per cent whereas in Dr Burton's letter it's only 80 per cent. Do you see that?---Therefore the letter should say 89, but I have to check my calculations here.

30 So are you say that's another error in the letter is it? You say that should be 89 per cent not 80 per cent?---Well I'd have to do the calculations, sorry, like I'll have to go back to the raw data that I have that's not presented here. The same way that the prostate cancer sensitivity showed the that 15 plus 3 in the report rather than 15 plus 5, where the correction has been made in the presentation.

And you told Ms Furness earlier that the report which you say was signed by Dr Burton - - -?---That's correct.

- - - doesn't deal with the issue of specificity?---Yes.

40 So how should we understand you derived the specificity in this PowerPoint presentation of 100 per cent in relation to pap smears?---As to the negative that was presented?

No. I can see, as I'm sure you can in the slide in the top right hand corner on page 60 of your tender bundle that you've presented the specificity at 100 per cent. Do you see that?---That's correct.

Now there's not a word of specificity measurements in Dr Burton's letter is there?---That's correct, there isn't.

And what I'm suggesting to you is that you completely misrepresented to the Pleiksna's in this PowerPoint presentation that Dr Burton's report relating to specificity reported 100 per cent when in fact it did not?---That would be incorrect. I'll have to go to my raw data to be able to calculate that. Like I said, there's no calculations there. If I need to make changes in terms of calculation what the slides reflect in terms of calculation would be slightly more accurate, I guess. But again, I'll have to go back to my raw data to be able to accurately tell you that. Again, there is no mention of specificity in the letter. So there is no misrepresentation because they did have the letter as well. So again if there is an error it would have been pointed out.

Well not by the Pleiksna's?---Well they can read can't they?

Well how could they, I'll withdraw that I'm sorry. Now by December, 2009 there had in fact been a falling out between you and Mr Neiron hadn't there?---Sorry, by what year?

By the end of December, 2009 there had been a falling out between you and Mr Neiron hadn't there?---Yes, there had.

Remember yesterday I put to you June of 2008 and you rejected that suggestion, but whatever the precise timing of that falling out might be, there's no question is there before the Commissioner that by the end of 2009 you and Mr Neiron had well and truly parted company?---That's correct.

30 And you went to Perth didn't you to make this presentation because you wanted to try and achieve from Mr Pleiksna and his son further opportunities to engage in Medex device research didn't you?---That's incorrect. It was upon their request that I went down there.

Well it may have been but why did you go? I mean what were you seeking to achieve out of this trip to Perth and the presentation of the subject matter as we see in these various PowerPoint slides?---I was more obliging them rather than seeking anything.

40 Well you must have gone there for a reason?---Just for the presentation they've asked politely that I come and present the results that, they had come and met with Gil Burton and discussed with Gil Burton. I obliged and, and so (not transcribable)

But Mr Pleiksna said in evidence as you well know that the meeting when they came to Perth was in May of 2009?---That's correct.

Seven months have rolled by - - -?---That's correct.

- - - and you're going to Perth and you're conducting a presentation to them?---Oh the, I'm not conducting a presentation, that's not the sole purpose. They were having a training, I was just invited to that training to give a presentation.

But what were presenting for? Please, please answer my question if you can, what were you - - -?---I'm sorry, it's very unclear.

- 10 Well let me try and put a very clear question to you. Why did you go to Perth and conduct a presentation at the end of 2009?---The Pleiksna's were having a training which was I think a three or four week training. They had a Medex doctor whose name was Dr De Souza. There were a few more clinicians there, there were a few nurses, a few other people which I cannot remember, just general either for business relations or, anyway, they asked me to come and do a presentation and I obliged. They said would you be able to assist in holding like a, a small workshop to help some of the nurses, just simply by indicating the derma visceral points on the body, so they can be trained in operating this system. I obliged. I went there with the
- 20 information that I had, calculations error of course, which are present both in the letter and in the presentation aside, that presentation was given. Letters they had already. I was just there for, basically for point out points on the body and to give that small presentation which lasted no more then about 25 minutes, 30 minutes.

And presumably they paid for your costs of going over there and coming home and your accommodation while you were there?---They paid for the flights and accommodation, that's correct.

- 30 And did you have an expectation after this presentation that you might have further commercial arrangements with Mr Pleiksna and his son?---No further commercial arrangements were discussed. On several occasions I had told them that I need to rest from Medex because of all the headache it had caused me in terms of all the internal arguments with Medex and I will get back to them in which they had sent several emails for me to come back and continue the research work which emails are present in the bundle.

Thank you, Ms Lazarus, I have nothing further, Commissioner.

- 40 THE COMMISSIONER: You may be excused from the witness box?
---Okay.

THE WITNESS EXCUSED

[3.51pm]

MR ALEXIS: Commissioner, could I recall Michelle Lazarus.

THE COMMISSIONER: The section 38 order which I previously made with regard to Ms Michelle Lazarus continues to apply.

THE SECTION 38 ORDER WHICH I PREVIOUSLY MADE WITH REGARD TO MS MICHELLE LAZARUS CONTINUES TO APPLY.

10

MR ALEXIS: Thank you, Commissioner. Ms Lazarus, do you have available to you the folder entitled Evidential Bundle Michelle Lazarus?
---Yes.

Now, Ms Lazarus, do you recall on one of the two occasions that I asked you some questions about a number of doctors and whether you've ever met them before or seen them before and one of those doctors I asked you a question about was Dr Burton, do you remember that?---Yes.

20

And do you remember at transcript 606 line 15 I asked you whether you've ever met Dr Gil Burton before and after a pause which was then noted you said that you had not met Dr Burton before, remember that?---Yes.

Now, could you open Exhibit 1, I need to ask you to look, before I go to your bundle I need to ask you to look at a page in Exhibit 1 which is page 146. And, Ms Lazarus, you may recall that I took you to this document before and you confirmed that your signature appeared next to the words "Applicant's Signature" on page 146?---Yes.

30

And I think you confirmed that the date was your handwriting?---Yes.

And you recall telling me that the document was a document that your sister asked you to sign?---Yes.

And you recall your evidence concerning what appears on page 148 about the description after the reference to job title, medical researcher (PhD student)?---Yes.

40

You remember what you told me about that?---Can you just remind me?

Well, can you tell me now whether or not that was on the document at the time you came to sign it on page 146?---I don't know whether it was.

THE COMMISSIONER: 148 isn't it?

MR ALEXIS: Sorry.

THE COMMISSIONER: The document at 146 but the page, (PhD student) is at page 148 isn't it?

MR ALEXIS: I'm asking you whether or not the detail on page 148 which includes the reference to PhD student was on the document when you came to sign it, we see your signature on 146?---Ah hmm.

10 What's the answer to that?---Well, my signature and the date that's mine and I wrote those things but 148 I don't know whether that was there when I signed and dated.

THE COMMISSIONER: Is that your handwriting?---No.

On page 148?---No.

20 MR ALEXIS: And what about back on 146? Just above the Department Head sign-off portion of the page you see the handwriting starting with your name and down to the word "hospital" where the Royal North Shore Hospital was written, is that your writing?---Yes, that's my writing. And I just wanted to let you know as well when I did - - -

Can I just ask you the next question please?---Well, I just want to explain because you're saying that I didn't see him but then I did pause and you asked me to explain why I paused and then my counsel at that time he stood up and started saying something and then he was cut off and then I wasn't allowed to give an answer and you moved on to the next line of questioning. So that's why I came back and explained that I had seen him in fact.

30 You haven't said that previously, Ms Lazarus, have you?---I have said that.

You have never given evidence in this inquiry that you have met Dr Burton before have you?---Yes, I did. That's a lie.

Is it?---Yes.

And do you say that you gave that evidence when you were re-called on your counsel's prompting?---No, that was before when I came back some time after a break or something.

40 Ms Lazarus, because I need to be utterly fair to you I'll show you page 606 of the transcript. Can we have that up on the screen please. It's the evidence that you gave on 21 February, 2011. And do you see, just pardon me a moment, Ms Lazarus. Now, on page 606 of the transcript do you see at line 8 I asked you about some personnel at North Shore Hospital, "Have you ever met or spoken with Professor Ross Smith?" You said, "No." Was that true?---Yes.

And then I asked you, "Have you ever met or spoken with Dr Gilbert Burton?" And you'll see that the transcript records "no audible reply". The Commissioner then said, "Look, Ms Lazarus" and there was then your answer, "No, the answer is no."?---Ah hmm.

Now, there can be no possible doubt, can there, that the question that you were answering and you said there, "The answer is no" is my question as to whether or not you'd ever met or spoken with Dr Gilbert Burton?---Well, that was because I was confused with the previous question that you'd asked me about clinical trials and I did come back and explain that to you.

Well, I'm just going to take you up on that because I'm going to show you the transcript of the balance of your evidence.

THE COMMISSIONER: I think I should just make it clear that line 21 on page 606 of the transcript where I said, "I don't think" and then there's brackets "not transcribable". The words I spoke were, "That is necessary."

MR ALEXIS: Yes, and that was in response to my attempt, unsuccessful as it was, to try and explore what it was that was causing the long pause.

THE COMMISSIONER: That's right?---Well, I wasn't really given a chance because you moved onto the next question because Mr Hogan - - -

You weren't given a chance to what?---Because Mr Alexis said, "Thank you and I note the pause before you gave the answer. Can you please tell me what matters were occupying your mind before you gave the answer to my question in the negative," and then Hogan just stood up and says, "Sir," and then you didn't let him say anything and then you said, well, I don't know what you said because it says "not transcribable" and that - - -

I've just told you what I said?---Well, I don't know if that's true because I don't remember that.

MR ALEXIS: Ms Lazarus, do you accept from me that the subject of whether or not you had ever met or spoken with Dr Gilbert Burton had not been raised again during your evidence on 21 February?---Sorry, what were you saying?

The subject of whether or not you had ever met or spoken with Dr Gilbert Burton was not raised again during your evidence on 21 February?---No, I did speak about it and I told you what, why I said what I did because - - -

Well, I studied the transcript for the rest of that day and may I suggest to you that the subject of whether or not you had ever met or spoken with Dr Gilbert Burton was not raised again during your evidence that day?---But I raised it. I, I told the Commissioner.

Well, if what you say is true can you point out where you did say it because my reading of your evidence would indicate the contrary?---I know I said it somewhere because the Commissioner had a lengthy conversation with me and he said, Are you sure, are you sure? And I said, Yes, yes, yes and I kept on saying that because he was apparently saying that I was the person who approached him about some sort of protocol or clinical trials but I wasn't involved in any of that.

10 So is really what you're seeking to tell me that what you said at page 606 of the transcript at line 10 and following was not the truth?---No, it was the truth because I thought it was in relation to the clinical trials.

All right. Well, we may be wasting a lot of time. Can I ask you again, have you ever met or spoken with Dr Gilbert Burton?---Only once but very briefly.

20 So the answer to the question that you gave at 606 of the transcript, line 12 to the Commissioner where you said the answer is no and the question that that was responding to was the question, "Have you ever met or spoken with Dr Gilbert Burton," was a false answer?---That's not false because I thought you were meaning the clinical trials because you'd confused me a lot.

Well, I'm not sure how that's possible, madam, because - - -?---It is, what do you mean, how - - -

Please don't argue with me.

THE COMMISSIONER: Just be polite?---I am being polite.

30 You are not and don't interrupt people when they're asking you questions. You've been given a lot of latitude. Just behave yourself?---I am. Okay, I'm sorry.

MR ALEXIS: All right. We'll back to page 605, oh, that's the final day. Now, if you look at 605, line 42 you see that I asked you this question, "Ms Lazarus, have you ever met or spoken with Professor Neville Hacker at the Royal Hospital for Women," you said, "No." "Have you ever met or spoken with Associate Professors Marsden at the hospital?" "No." Do you see that?---Yes.

40 Well, you had no trouble answering those questions, did you?---No.

And then over the page, page 606 of the transcript, "Have you ever spoken with any other medical practitioner at the Royal Hospital for Women," and then I added to that question, "In relation to the subject of clinical trials either to be conducted or having been conducted at that hospital," You said, "No," do you see that? You had no trouble answering that question, did you?---Sorry, I just lost you then.

Well, you see the question at the top of page 606?---Yes, where it says, “Let me add to that question?”

Yeah, and I added to the question and I said in relation to the subject of clinical trials?---That’s where you confused me because you said clinical trials.

10 All right. And then you see the next question, “Now if I can just ask you about some personnel at the Royal North Shore Hospital at St Leonards?”
---That’s, that’s what I connected together.

Have you ever met Professor Burton, you said no?---That’s because I connected the clinical trials together with the next question that you asked me.

20 Well, how could you have done that when the intermediate question related to Professor Ross Smith, you had no trouble answering that question, did you?---Okay, I thought you meant the clinical trials, that’s what I’m trying to say and seriously, this has been like a really harrowing, harrowing little massive saga for me and I’m trying to answer your questions to the best of my abilities and you have confused me on many, many occasions where I’ve mistaken even in the hospital means. I think you said Royal for Women in one instance and that doesn’t even make sense.

Have you finished?---(NO AUDIBLE REPLY)

30 Now, could I have that transcript back, please. Now, madam, what I want to suggest to you is that you understood when you signed this document at page 146 that your sister Sandra would be using this form for the purpose of enabling you to have email and computer access the Royal North Shore Hospital?---All I understood that, was that she would be getting or I would be getting email access.

And you did get email access, didn’t you?---Yes.

40 And you got email access so that you could use the hospital’s domain name for the purpose of sending emails to potential corporate sponsors, is that so?
---Well, that’s what I ended up doing, yes.

And if we were to try and identify an example of you using the hospital email address in that sort of respect could we go for example to page 14 of your examination bundle and the numbering’s in the top right-hand corner. Do you have page 14?---Yes.

And although this seems to be an email from Mr David Pleiksna to you and your sister you see that the email address to which he was sending this email to you was mlazarus@nsccahs.health.nsw.gov.au?---Yes, I can see that.

And so is that the email address that you were able to obtain as a result of signing the form that we've just gone to?---Yes.

And is that the email address that then you used when communicating as and when you say you did to potential corporate sponsors?---Yes.

10 And may I suggest to you that the only reason why you used that email address to communicate with corporate sponsors when you were doing the work that you say that you did under the arrangement with Mr Neiron is to be able to present yourself to those people as associated in some way with the Royal North Shore Hospital?---What do you mean?

20 When you communicated with, as you've described it in your evidence on the earlier occasion corporate sponsors, you had a choice, didn't you, between using your own private email address or using the hospital email, didn't you?---Well, I had been using my own email address, a private one and also a Wish Consulting one for a while but Johel wanted me to go and get like a proper one he said.

But whether that be true or not, what you did when communicating was to use the hospital email address so that you could represent yourself as connected in some way to the Royal North Hospital?---Well, I was connected to them because I was working for them.

But as you've told me and told me a number of times the contract that you say you had was with Mr Neiron?---Yes, but it also outlined that my responsibilities were to the hospitals as well.

30 But when you were doing the work that you would have the Commission accept you were doing for the hospital and for the benefit of the hospital that was in accordance with this written contract that you had with Mr Neiron's company wasn't it?---Can you repeat that question.

When you were doing the work that you've given evidence about that was work done because of the written contract that you say exists with Mr Neiron's company isn't it?---Look, what I can explain to you is that - - -

40 You've already explained it, madam. Is what I put to you correct or not?---I don't understand what you're meaning, what you're asking.

Let me be very plain with you. When you used the hospital email address you did so for the purpose of representing yourself as connected with the Royal North Shore Hospital so that the people that you were dealing with thought that you were connected in some way with that institution?---It's not so that they thought that I was connected, the fact is I was connected very much.

THE COMMISSIONER: You weren't employed by them?---I was, I was, I was a vendor. The hospital has obligations to pay every single vendor 'cause I'm a service provider.

A vendor to the hospital is not an employee of the hospital?---They are a service provider.

It's just somebody who sells something to the hospital?---It's a service provider and they have obligations to pay every service provider.

10

That doesn't connect you to the hospital?---Yes, it does, it very much does.

What, that you're associated with the hospital?---Yes, I'm providing them with services.

MR ALEXIS: But, Ms Lazarus, you told me on the last occasion that you never spoke to anyone at the hospital concerning the services that you say you were providing?---I personally only spoke to Gil Burton and that's about it.

20

Yes. But apart from what you've said about that subject matter you never spoke to anyone at the hospital about providing the hospital with any marketing services did you?---Well, I'm sure that Sandra would've and so would've Johel.

All right. Well, even if that be so can I come back to my question which is this. When you were sending emails to corporate sponsors using the hospital email address you did so for the purpose of representing yourself to those sponsors as connected in some way with the hospital?---Well, I, I don't understand, of course I was connected to them.

30

But that's what you were intending to represent to people that you were dealing with?---Well, when I was using my private emails I was also saying that I was connected to the hospital because I was.

And what were you saying, what was it in your emails from your private email address that told people that you were connected with the hospital?---I can't remember what I was writing, I'm sure I was saying that I was connected to them, that's for sure, especially using their name on the material that was getting sent out and the doctor's names. I mean, I mentioned that in my emails and my correspondence with them.

40

So what, when you ended the email, "regards, Michelle Lazarus" or something to that effect it indicated that you were connected with the hospital did it?---What do you mean?

Well, how did you indicate to people when you emailed them that you were connected with the hospital?---I put it in the body of my text.

What did you say?---I was a service provider to the hospital.

Providing what service?---Gaining potential funding from potential sponsors. Something of that sort. Can't remember the exact words.

10 Can I suggest to you that when you signed the computer access form that we've just been to in the examination bundle you knew that your sister would be taking that document to Professor Burton and representing herself as Michelle Lazarus - - -?---No way.

- - - with the purpose of getting that form signed?---That is so not true.

And I want to suggest to you that to your knowledge she did that so that you could obtain the use of an email address so that you could use that email address for the purpose of communicating with corporate sponsors and represent yourself as connected in some way with the hospital?---That is such a lie.

20 Is it?---It's a blatant lie.

All right. Thank you, Ms Lazarus, that's all I wish to ask you.

THE COMMISSIONER: Ms Furness.

MS FURNESS: Nothing thank you, Commissioner.

THE COMMISSIONER: Ms Soars

30 MS SOARS: Nothing thank you, Commissioner.

THE COMMISSIONER: You are free to go?---Can't I present any of my work or lead any of my evidence?

Yes, you can, do you want to lead evidence? What do you want to say?
---Will you be assessing my work that's in here?

No?---At all?

40 Assessing your work. I don't know what you mean?---Looking at my work.

What work?---The work that's been presented in here.

I don't know what work has been presented in there so I can't answer that. Can you explain to me what your work is?---May I just lead my evidence then?

Your evidence?---Inside this folder.

MS SOARS: Commissioner, just to be helpful, I don't know if Ms Lazarus should be reminded that if she wishes to formally tender that bundle that she's provided she needs to ask you to do that.

THE WITNESS: Yes.

THE COMMISSIONER: You want to tender that bundle?---(NO AUDIBLE REPLY)

10

Yes. Can I see the bundle?

MR ALEXIS: It's already Exhibit 39.

THE WITNESS: No, but there's new documentation in here, email correspondence and whatnot that hasn't been tendered.

THE COMMISSIONER: Your obligation is to have shown it to Mr Alexis beforehand?---He has got a copy of it.

20

You've said that there's new material, have you shown him the new material?---He should have a copy right now.

Yes, but have you previously shown him the new material?---Well, I had counsel back then.

MS SOARS: I think just again to be helpful, Commissioner, the witness may be confused about when she gave the bundle to the Commission. She may wish to just give that evidence.

30

THE WITNESS: I gave this bundle when it was requested to Jan Daly.

MS SOARS: Do you remember when?---Monday.

THE COMMISSIONER: I can see you can't remember but what I'm really trying to find out is whether the document you want to tender, the folder that you want to tender contains documents that have not yet been tendered?---I don't understand what you mean.

40

MS SOARS: Not yet in the earlier exhibit that your counsel prepared? ---Yes.

There are additional documents.

THE COMMISSIONER: Well, we don't know what they are. How do we identify them?

MS SOARS: Are they at the back of the bundle or mixed into the bundle?

---They're at the front of the bundle under the heading Emails. There are also tabs at the back, like qualifications and donation receipts and that's about it.

THE COMMISSIONER: Mr Alexis, what do you suggest we do about this?

MR ALEXIS: Well, Commissioner, the bundle is helpful insofar as it is paginated unlike Exhibit 39 so if this bundle was received perhaps as a substitute for Exhibit 39 at least to the extent that 39 is reproduced in this bundle we've got the benefit of the pagination so that in submissions we can refer to the document by page otherwise, Commissioner, the material in here by and large appears to be completely irrelevant but I don't think there's any particular benefit in - - -

THE WITNESS: There's also a protocol in there that - - -

MR ALEXIS: Perhaps I could finish my submission, Ms Lazarus. I don't see that there's any particular profit in debating the relevance of the material and I would not propose to do so. There is certainly new material in the sense that there is material in here that we haven't seen before but again, it's of either no relevance or marginal relevance that a debate about its relevance doesn't advance things so in light of that I've got no objection to it being tendered.

MS FURNESS: Commissioner, I haven't seen that material.

THE COMMISSIONER: You've never seen it?

MS FURNESS: No. Certainly seen 39.

THE COMMISSIONER: So what is your attitude to it?

MS FURNESS: Well, I would object to its tender until I have seen it.

THE WITNESS: There's also tabs in here because you asked I think my counsel to put proper tabs in here so that you could look at it properly and it has been paginated.

THE COMMISSIONER: All the documents have to be given to the parties out of fairness. You've seen every document that's come in so must everybody see the documents you want to put in?---I was only told to do two copies of these.

Told by whom?---Jan.

MS FURNESS: Commissioner, I've just been handed the bundle.

MS SOARS: I can indicate I don't have a bundle copy either but I don't make any protest about that, Commissioner.

THE COMMISSIONER: Let's leave that for that moment, I'll deal with what Ms Furness says in a moment. Just tell me what the additional documents are. What do you want to say about that? Sorry, you don't have to tell me what they are except broadly, generally and then tell me why you've put them in and what you say about them?---Okay. Well, some of it has to do with correspondence between myself and my sister showing that,
10 of the work, evidence of the work that was being carried out.

Is that the marketing work?---Yes, some of it. And also at the back no one had a copy of my formal qualifications, my degree.

Yes?---And also, and I've also included in there the donation receipt which Mr Alexis was talking about a while before.

What the donation receipt from St Vincent's Hospital?---Yes, with the words donation receipt and acknowledgement that it was indeed like a
20 donation.

But you know that wasn't one?---Well it's included in there and that like you said before, it shows my credibility in what I was saying before.

Okay. Anything else?---Those are the important new things that I've included in there.

All right. Now Ms Furness, you don't really want to go through all of that do you? You've heard what Ms Lazarus says - - -
30

MS FURNESS: Well I did and I do want to go through it, Commissioner.

THE COMMISSIONER: Well I'm going to stop this inquiry. I can't, I'm not going to adjourn the inquiry and I don't see that this material is of any particular moment.

MS FURNESS: Well if it's not of any particular moment it shouldn't be received by the Commission is my submission.

40 THE COMMISSIONER: Well I, I'm going to receive it.

MS FURNESS: Well I maintain my objection, Commissioner.

THE COMMISSIONER: I will accept the, the tender of Ms Lazarus' file which will be a substitution for, for what?

MR ALEXIS: Exhibit 39.

THE COMMISSIONER: Which will be a substitution for Exhibit 39. Now Ms Furness, I don't want to close you out of this, so what I'm, what I'm going to do is give you leave to make any application that you want to, if you want to recall anybody or do anything, I'll consider that if you make that application by the end of next week.

MS FURNESS: End of?

THE COMMISSIONER: Next week.

10

MS FURNESS: Thank you, Commissioner. Might I indicate that another way I might deal with the material is that if there is any submission based on any material in this bundle, which is now Exhibit 39, I may deal with it by way of submissions. But that's - - -

THE COMMISSIONER: That's up to you.

MS FURNESS: Yes. I'm indicating that in the absence of having read it. But I thank, thank you, Commissioner for giving me the leave.

20

THE COMMISSIONER: All right. Now Ms Lazarus, while you're here I just need to ask you, you're not legally represented?---Ah hmm.

When the evidence here is complete which will occur this afternoon, each party involved is given the opportunity to file written submissions and you have the same opportunity. Do you wish to take advantage of that?---So - - -

30

What will happen is that Mr Alexis will first provide written submissions to the Commission in which his arguments will be set out and he will be, he will be submitting, he will make submissions about what he suggests the Commission should do?---Ah hmm.

Then those people who are affected by that will have the opportunity of answering those submissions in writing. And then the Commission will go, will deliberate upon what has happened. Now I'm simply asking you whether you want to have the opportunity to respond in writing to Mr Alexis' submissions?---You mean whether I want to make a submission?

40

Yes, in writing?---Yes. I'll try and see if I can find somebody to represent or make a submission on my behalf, 'cause as yet I haven't been able to.

Yes, there are lawyers who the Commission, which the government provides or the Commission has an arrangement with who deal with people who need representation?---Ah hmm.

So if you speak to Ms Daly, she will give you the details of that?---Okay.

And this an independent organisation not connected to the ICAC and we have lawyers from them who regularly appear at inquiries. So you, you may be able to get one of them to help you?---Okay. Thank you.

All right. You may return to your - - -?---Thank you.

But you should listen to the orders that are made at the end when I make the orders and make a note of them so that you can tell any lawyer that you may get what's required of you?---Okay.

10

All right?---Thank you.

And what I've said to you applies to your sister, Jessica as well?---Jessica as well. Okay. Thank you.

THE WITNESS EXCUSED

[4.25pm]

20 MR ALEXIS: Commissioner, the pamphlet relating to the services provided by the Legal Representation Office were provided to each of Lazarus sisters - - -

THE COMMISSIONER: I see.

MR ALEXIS: - - - when the notice for the public hearing was given to the, and the summonses.

30 THE COMMISSIONER: Well perhaps you can give it to them again as a reminder.

MR ALEXIS: We have another brochure available and I'll ensure that both Michelle and Jessica Lazarus get that, get that when we adjourn.

Finally, Commissioner, could I recall Jessica Lazarus.

THE COMMISSIONER: Yes. Ms Lazarus, would you please come back to the witness box. I think that you should administer the oath to Ms Lazarus again, please.

40

MS FURNESS: I just note, Commissioner, I've just been handed a bundle of material, I presume it's the same, on the same basis as the material in relation to Michelle Lazarus.

THE COMMISSIONER: I have no idea what it is.

MS FURNESS: Well I don't know - - -

THE COMMISSIONER: Look, I think you should just speak to Mr Alexis or Ms Daly. If there's a problem with it just let me know.

MS FURNESS: Thank you, Commissioner.

THE COMMISSIONER: The section 38 order previously made in relation to Ms Jessica Lazarus continues to apply.

MR ALEXIS: Thank you, Commissioner. Ms Lazarus, do you remember on the last occasion I asked you some questions about the course that you did when you learnt how to perform a test using a Medex device on a patient?---Yes.

And that was the course that you did in August of 2007 at Bondi Junction? ---Yes.

Now in relation to your evidence that you gave on the last occasion concerning the occasion or so when you saw a patient or patients at the Royal North, at the Royal Hospital for Women, and administered a test using the Medex device, I want to suggest to you that your evidence given on that subject was false. What do you say to that?---I'll say your suggestion is false.

I'm sorry?---Your suggestion is false.

And I want to suggest to you that the detail or the content of your evidence on that subject was based on nothing more than what you'd learnt in terms of the administering of that test during the course of study that you did in August of 2007 at Bondi Junction?---Sorry, I don't understand. Can you please say that again?

The evidence that you gave on the last occasion concerning the discussion with the patient, the use of the device on the patient, you described how they sat on the, on the bed and you fitted the device and used the device to perform a test, I want to suggest to you that that evidence was based on what you'd learnt during the course of study in August, 2007 and that it had nothing to do with any test that you performed at the Royal Hospital for Women?---No, that's false, 'cause I gave evidence of the, what the consulting room looked like as well when the Commissioner asked me about it.

And that's because your sister took you to the Royal Hospital for Women and showed you through that area isn't it?---She showed me through initially and then I was there on my own doing the test.

But you were able to give evidence about what you saw and what the layout of rooms was because your sister showed you?---No, that's not the sole reason because I was there conducting tests.

And you've given before this inquiry about actually seeing a patient and actually administering a Medex test to a patient - - -?---Yes.

- - - for the purpose only of trying to support your sister's evidence in this inquiry?---No, that's not correct at all.

Now Ms Lazarus, I understand that you've provided to the Commission a bundle of documents entitled Examination Bundle. Is there something you wish to do with that?---Yeah, I'll tender it like my sister tendered hers.

10

All right. Well having indicated that, Commissioner, can I object only because it reproduces documents that are already in evidence? In short summary - - -

THE COMMISSIONER: Perhaps Ms Soars can help us with that.

MS SOARS: I've never seen it, Commissioner.

MR ALEXIS: There are three tabs in the bundle. The first is entitled RHW
20 Evidence and it comprises the ethics letter together with the ethics
application. And we're going to receive that twice in original form and in a
copy form. We don't need it with respect, a third time. And then behind the
tab entitled "Medex evidence" we have the examination, the course of study
if you can call it that under the hand of the doctor who did the training in
August 2007 and Mr Hogan tendered that and there's some other documents
relating to the Medex Medical Solutions exhibit at the annual scientific
convention in 2007 which has been the subject of some questions. It seems
to us to be completely irrelevant. And then finally there's a copy of Ms
30 Jessica Lazarus' Bachelor of Medical Science from the University of New
South Wales, I'm not sure why we need that and we then have a further
copy of the same document relating to training so in my submission the
content is completely irrelevant.

THE COMMISSIONER: Yes. Ms Lazarus, you heard that?---Yes.

Did you understand it?---Yes, but I didn't agree with some of the stuff that he said.

40 What didn't you agree with?---There's, you know, the documents about the,
the Australian Scientific Convention and they support my evidence that I
was involved in the Medex clinical trials. Like it's very curious for
someone to go and do a training or go to a convention and then not do
anything with it. That's why I thought it was very important to include that
in there.

And what else?---And then you've got the university assignment on the
Medex test and I was really enthusiastic about it and that was submitted in
September 2008.

Sorry, what documents are they?---It's, it's, it's, I think it's around a 20-page document what was an assignment that I submitted to my university on the - - -

MS FURNESS: (not transcribable) Commissioner.

THE COMMISSIONER: I don't have it?---It's in that yellow folder.

10 Oh, it's in here?---Yeah, its page 62 and onwards.

Sorry, so just identify for me please the first, the first set of documents that you, that you refer to?---The first set, it's page 56 to, sorry page 56 to 60 is the Australian Scientific Convention documents.

It's difficult for me to tell the page numbers because the numbers are, there are two numbers on each page?---Sorry, I think it's the lower number.

20 So what page again, 56 did you say?---56 to 60.

56 to 60. Well, my page 56 is a letterhead of the Royal Australian College of General Practitioners?---That's an envelope and then behind that you've got a blank page and then behind that you've got the Australian Scientific Convention participation record and then behind that's another blank and - - -

30 Just if you can just take that file and open the page where you say it is please?---Okay. Sorry, it's just, it's just (not transcribable) this one and that's all the Australian Scientific Convention (not transcribable)

That's 58?---Yeah, 56 is the envelope, 58 is the participation records and 60 is the delegate badge just to show that I was an exhibitor at the Australian Scientific Convention for Medex.

Now, what other documents do you want, do you want to speak about?
---Then you've got page 62 to 73.

40 And what are these documents?---And these documents include and are related to the assignment that I submitted to the University of New South Wales. It was an assignment about the Medex test and its implications in medicine.

And what do you say that shows?---That shows that I had a strong involvement in Medex and I was doing the tests because it is very funny for someone to sort of do an entire assignment, something like a 20 page assignment if they don't know anything about how the tests work and they weren't enthusiastic or involved in it and it was submitted in September 2008, right around when I was doing the tests.

Just tell me again the pages, please?---62 to 77. I mean, 62 to 73, pardon me.

Anything else?---The final document, I believe its page 74 but you won't be able to see the number because it's black on the border.

Yeah?---It's my degree. I couldn't find my certificate of degree, I think ICAC has it, I'm not too sure.

10

Right?---So I photocopied the plaque and it was just to show that I was qualified to do the work that I was doing. I've got a degree in medical science.

O.K. Anything else?---No, that's it, unless, sorry, unless the certificate of attendance for the Medex training has not been tendered I, I'd like to tender that too.

20

I think it has been tendered, hasn't it?---And there's, there's a final document that hasn't been included in this because ICAC's got hold of it and I couldn't get a photocopy of it, I'm not too sure if it's been tendered, I asked Paul Hogan to tender it but I'm not too sure that he did. It was the Royal Hospital for Women security access pass to show that I was in fact authorised to be at the hospital and I was in fact there doing the work.

Where is that?---I think ICAC's got it, I couldn't get a copy of it.

MR ALEXIS: We have that.

30

THE COMMISSIONER: That hasn't been tendered?

MR ALEXIS: No, it can be.

THE COMMISSIONER: All right?---I'd like to tender that as well, thanks.

All right. Well, what we'll do, the other documents in the file have as I understand it been tendered already so there's no need to tender them?
---Okay.

40

Do we will remove, what I will ask you to do is to remove from the file - -
-?---Yes.

All the documents except pages 56, 58 and 60?---Okay.

62 to 73?---Okay.

Your degree certificate?---Okay.

And that bundle will be received as Exhibit 136?---And that's including the security pass?

I'll deal with that in a moment?---Okay.

135 is the clinical study protocol. Thank you.

THE COMMISSIONER: Now, I'm going to return this bundle to you, you take out the documents other and the three categories of document that I mentioned, you've got, you know which they are?---Okay, yeah.

Document, pages 56, 58 and 60, that's one lot?---Okay.

62 to 73 and the, your degree certificate?---Okay.

Those are to remain, everything else to be removed?---Okay.

And then the bundle containing those three categories of documents, if, you could please hand to Ms Daly?---Would you like me to do it this afternoon?

Yes, please?---Okay.

And that will be Exhibit 135 and Exhibit 136 will be the Royal Hospital for Women access pass for Ms Jessica Lazarus?---Okay, thank you.

#EXHIBIT 135 - EVIDENTIAL BUNDLE SUBMITTED BY JESSICA LAZARUS

30

#EXHIBIT 136 - ROYAL HOSPITAL FOR WOMEN ACCESS PASS FOR MS JESSICA LAZARUS

THE COMMISSIONER: Now, is there anything else you want to say?---I can't think of anything right now.

All right. Now, you heard what I said to your sister Michelle about what's going to happen next?---Okay.

40

So there will be the written submissions by Mr Alexis and a period of time will be given to everybody else to respond?---Okay.

So there will be written submissions by Mr Alexis and a period of time will be given to everybody else to respond?---Okay.

And if you wish to respond you'll have to do it within the time that you're given?---Okay. How long after - - -

Well I'll deal with that now?---Okay.

Now does anybody else wish to question Ms Lazarus?

MS FURNESS: No, thank you, Commissioner.

THE COMMISSIONER: No.

10 MS SOARS: No, thank you, Commissioner.

THE COMMISSIONER: No. Yes, thank you Ms Lazarus?---Thank you.

You may return to your seat?---Okay. Thank you.

THE WITNESS EXCUSED

[4.39pm]

20 THE COMMISSIONER: Now Mr Alexis, when would you be in a position to provide submissions?

MR ALEXIS: At close of business 4 April, which is Monday week.

THE COMMISSIONER: Two weeks be sufficient, two weeks after that be sufficient Ms Soars?

MS FURNESS: Yes, it will be, thank you.

30 THE COMMISSIONER: For Ms Furness. Ms Soars?

MS SOARS: Yes, Commissioner.

THE COMMISSIONER: So the, Mr Alexis' submissions, is that a Friday, 4 April?

MR ALEXIS: Sorry?

THE COMMISSIONER: Is that a Friday?

40

MR ALEXIS: Monday, 4 April.

THE COMMISSIONER: Monday, 4 April. Does that, 4th to the 18th, does that include Easter?

MS FURNESS: No, Easter is after that, Commissioner.

THE COMMISSIONER: After that, thank you. So Mr Alexis will provide his submissions on 4 April. They will immediately be transmitted to all other interested parties and to make sure that the, we get it to you as quickly as possible please make sure that Ms Daly has the address where they are to be sent and the best way of getting them to you. And then the submissions in reply should be filed with the Commission by close of business on 18 April.

10 MR ALEXIS: Commissioner, a suppression order ought to be made in relation to the written submissions until as I understand the final publication of the report.

THE COMMISSIONER: Until?

MR ALEXIS: The publication of the report.

THE COMMISSIONER: Yes. There will be a suppression order in relation to all the submissions until the report of the Commission is published.

20 MS FURNESS: Commissioner, I recalled in Exhibit 134 when I first looked at it that there may have been some patients names referred to in appointment lists.

THE COMMISSIONER: I think you are correct. Yes, if, all the documents containing patients, all patients names which appear in any document in any Exhibit are subject to a suppression order.

30 **ALL THE DOCUMENTS CONTAINING PATIENTS, ALL PATIENTS NAMES WHICH APPEAR IN ANY DOCUMENT IN ANY EXHIBIT ARE SUBJECT TO A SUPPRESSION ORDER**

MS FURNESS: Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you to all involved. The Commission now adjourns.

40 **AT 4.42pm THE MATTER WAS ADJOURNED ACCORDINGLY**
[4.42pm]